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ABSTRACT

This handbook is designed to serve as a guide to help school boards understand collective bargaining and the labor-management relationships in their districts. Chapter 1 describes what school-board members need to know. Chapter 2 discusses some of the political and legal realities that school boards face in the collective-bargaining process. Chapters 3 and 4 depict how bargaining works and describe some alternative bargaining styles. The fifth chapter examines the board's reaction to union demands, with a focus on building credibility. Chapters 6 and 7 offer guidelines for preparing to bargain and understanding roles and responsibilities. The eighth and ninth chapters describe strategies for resolving a negotiation impasse and responding to a teachers' strike. Ten concluding recommendations are offered in the final chapter. Four tables and a glossary are included. (LMI)

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Collective Bargaining

and the School Board Member

A practical perspective for the 1990s

Ronald R. Booth

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Illinois Association of School Boards

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Collective Bargaining and the School Board Member

A practical perspective for the 1990s

Ronald R. Booth

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Ronald R. Booth is a labor relations consultant who negotiates collective bargaining agreements for a number of Illinois school boards. Since 1985 he has served as executive secretary of the North American Association of Educational Negotiators.

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Collective Bargaining and the School Board Member

A practical perspective for the 1990s

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The book

The first edition of *Collective Bargaining and the School Board Member* was written by Max A. Bailey and Ronald R. Booth and published by IASB in 1978. The book earned wide popularity among school board members across the nation until it went out of print following the proliferation of state bargaining laws in the late 1980s. This Revised Edition strives to present much of the same practical advice in the context of today's widely divergent state laws and local practices.

October, 1993

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About this book

The original version of this handbook was published in 1978 as a guide for school boards that, for the most part, were confronting collective bargaining for the first time. A great deal has changed since then. For one thing, many states have enacted laws requiring school boards to recognize employee bargaining units upon demand—including Illinois, where the proportion of school boards engaged in teacher bargaining has grown from 40 percent to more than 90 percent since 1978.

Other changes include a certain maturation of the labor-management relationship and increased sophistication of the bargaining process. At least in many school districts, parents and taxpayers have grown somewhat more accustomed to viewing their teachers as part of organized labor.

Thanks to such changes, new people coming on school boards today will find a different situation from the one that confronted their predecessors a few years ago. They should not have to face the fallout of union organizing. One thing has not changed, however; it is still imperative for school board members to understand school bargaining and the labor-management relationships in their respective districts.

Although most school districts today are engaged in some form of bargaining with their teachers or other employees, newly-elected members of the school board are usually ill-prepared for the pressures that bargaining often creates. Yes, it is true that collective bargaining is a job for well-trained professionals. School boards properly view labor relations as an administrative function and hold their superintendents responsible for effective personnel management. However, the superintendent cannot carry out the negotia-

tions function satisfactorily without clear guidance from the board.

Moreover, collective bargaining frequently is colored with strong political overtones in the community. Board members can find themselves under pressure from citizens or employees to answer individually for labor relations problems. Many union leaders, for example, believe they can get more of what they want by isolating the board from its administrative team. Thus, they demand to negotiate directly with school board members.

The more board members know about labor relations concepts, the better they will be able to handle such pressures without compromising the total board or undercutting the administrative staff. Members of the school board must understand collective bargaining, where it fits in the overall scheme of management functions, and the board's proper role in the bargaining process.

That is why this handbook is addressed specifically to school board members. We sincerely hope it will prove helpful as an introduction to school bargaining in all types of situations. In addition, board members should plan to attend bargaining workshops in order to obtain a deeper understanding of the subject.

Wayne L. Sampson
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October, 1993

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1. What school board members need to know

When teacher unions began challenging school boards across the country in the 1960s and 1970s, their goal was to establish labor-management relationships patterned after the traditional industrial model that had evolved much earlier in the American private sector. That model begins with the premise that management has the money and power that labor wants. Driven by federal law, the private-sector model also presumes a protected right of employees to organize and to press management for union recognition. Once recognized as the exclusive bargaining representative of employees, the union uses the threat of impasse and strike to counterbalance management's power at the bargaining table and to gradually extract benefits (money and power) for its membership.

School board members, particularly those new to their positions, may err badly if they prejudge their local labor-management relationship based on the traditional model of collective bargaining as they know it in the private sector. Although labor relations in thousands of school districts across the country today fits that traditional model, many do not. Many school districts have never reached the traditional model, either because their employees have never demanded it or because state law precludes it. Still other districts achieved that model, found it wanting, and moved forward to still other variations in their labor relationships.

Labor relations in any particular school district, therefore, may not resemble the industrial model at all.

Differences in laws create large variations among the 50

states. Some states require school boards to recognize employee unions for collective bargaining purposes while others establish only informal "meet and confer" requirements. States that have bargaining laws may or may not distinguish between bargainable and non-bargainable topics. Some permit strikes, some do not. Some grant school employees far more power at the bargaining table than are enjoyed by private sector workers.

In states that have no laws regulating the bargaining relationship, school boards and teachers are free to work out their own procedural agreements and those agreements often represent binding contractual obligations. Thus, local traditions and options also create variations within each state, regardless of whether there is or is not a public sector bargaining law. Much depends upon state and local teacher union leadership.

Due to the numerous possibilities for labor-management relationships among America's public schools, it is important for the school board member to learn:

- How does the labor-management relationship work in my district? Is it governed by state law? Does it involve traditional collective bargaining, some other model, or no bargaining at all? What is its history?

- How are school board actions and communications affected by the labor-management relationship? Is there a distinction between non-bargainable "management rights" and bargainable "terms and conditions of employment?"

In school districts where state law or local bargaining agreements regulate labor-management relationships, there will be matters on which the school board cannot act or communicate without union assent. It should go without saying that individual school board members never act or communicate with employees on behalf of the full board unless so authorized by the full board. Where a labor agreement exists, even the full board may not act or communicate with employees on certain specified topics other than through the union. Such topics would typically include

wages, working conditions, and related issues either governed by the contract or mandated in state law.

Each school board must understand which topics it may address through policy and which topics must be handled at the bargaining table. Administrators must know which matters they may discuss directly with employees and which topics they must address only with the employees' exclusive bargaining agent.

In addition, school board members and administrators who are confronted with the bargaining process must understand such additional matters as:

- the essential distinction between labor relations and human relations;
- how the local bargaining process works and where everyone fits in;
- options available for improving the bargaining process and the pitfalls those options present.

These are among the issues that will be addressed in the following chapters.

2. Some legal and political realities

The right to bargain

The First and Fourteenth Amendments to the U.S. Constitution guarantee to all citizens the rights of association and assembly. These rights provide a constitutional foundation for employees to form organizations and seek recognition from employers. Private sector employees acquired the additional right to bargain collectively with their employers under the National Labor Relations Act (Wagner Act), passed in 1935, and later amended by the Labor Management Relations Act of 1947 (Taft-Hartley Act).

Public employees, of course, enjoy the constitutionally-protected rights of association and assembly. However, there is no federal law requiring public employers to bargain collectively with their employees. The Wagner Act and the Taft-Hartley Act apply only to private sector labor-management relations. School employees in most places acquired the right to bargain collectively by persuading the school board to sit down with the union at the bargaining table and to sign an agreement formally recognizing the union as official bargaining agent. Defacto bargaining—or bargaining in the absence of a statutory requirement to do so—has been going on for many years in virtually every state in the union.

Although many school boards resisted pressures to recognize employee unions in the early years of teacher unions, defacto bargaining in many states led eventually to the enactment of state laws regulating the process. In fact, most state laws do more than regulate school employee bargain-

ing; they typically require school boards to recognize and negotiate with unions that can prove they represent a majority of bargaining unit members.

Moreover, even in states that do not require school boards to negotiate with employee unions, court rulings often permit school boards to negotiate with unions if they wish and may provide a substantial body of law regulating the negotiations process. The absence of a collective bargaining law does not preclude school boards from entering into formal or informal negotiated contracts with their teachers. In addition, numerous boards have negotiated contracts with non-teaching employees, such as custodians, engineers, clerks, bus drivers, and cooks.

In states that do not require school boards to bargain with unions, most school districts with negotiated contracts will usually be found in or near urban population centers. But there remain many areas of the country where school board bargaining is the exception rather than the rule. Whether boards in those areas eventually follow the trend toward employee bargaining remains to be seen.

Why school boards bargain

School boards typically do not recognize and bargain with employee unions because they want to. They do it because of either (a) state laws that require them to do so upon request of a majority of employees or (b) pressures created by disgruntled teachers in the schools and in the community.

Currently, more than 30 states have statutes creating collective bargaining rights for public school employees. Some states have laws covering collective bargaining for all public employees, some have laws applicable only to school employees, and still others apply only to teachers. These laws are referred to by various titles in different states—including Public Employee Relations Act, Employer-Employee Relations Act, and Educational Labor Relations Act—which indicate that some state laws cover more than educational employment relations.

In many states without bargaining laws, some school districts negotiate with employee unions even though they have no specific law to guide the process. Typically, states without collective bargaining laws have examples of both formal and informal bargaining. There are statutes which influence bargaining agreements (e.g., tenure laws, minimum sick leave provisions), as well as court cases which guide the negotiations process and restrict agreements.

In the absence of a state mandate, districts that engage in formal bargaining are guided by related statutes and court decisions. However, the final decision of whether to bargain is left to the board of education. One might ask: Why would a board enter into formal bargaining if there is no law which requires it? The answer is, political pressure and/or union organizing tactics.

The pressure to bargain comes from various sources. First, there is obvious pressure from teachers who believe they are second-class citizens if they don't have a negotiated contract. Informational picketing, public relations campaigns, and strike threats all pressure a board toward formal negotiations. Second, there are always people who believe that negotiating a formal contract with school employees seems reasonable. ("We bargain at our plant, so why not let teachers bargain?") This pressure is especially prevalent if one or more of the board members is employed in a private sector situation where formal bargaining is accepted as a matter of course or where board members have been elected with teacher union support.

In a state without a bargaining statute, once a board of education recognizes the teachers union (or any other union), the negotiations process proceeds much as it would if there were a statute. Some statutes provide mandates regarding scope of bargaining and impasse procedures designed to regulate the bargaining process. In states without a statute, both boards and unions have more flexibility. What is negotiable and how impasse will be handled are among the matters to be determined at the bargaining table.

Initial organizing efforts

Initial efforts at school bargaining usually prove emotional and divisive. Emotion enters into both the organizing of the local teachers group and in the reaction of management to those initial efforts. Both sides have to be emotional for the union organizer to succeed. The initial union strategy is to create issues, not to find solutions. Once contract bargaining begins, emotion is maintained by management resistance to "wish list" proposals and high expectations sold to the membership during the organizing campaign.

The good news is that time typically brings emotional stability as the union becomes more secure in its position and the board-management team becomes more accustomed to the bargaining process. Failure to grow by either side can delay maturation, of course.

The collective bargaining process itself is adversarial in nature. It involves a bilateral power struggle. The only real power that teachers bring to bargaining is their services; to demonstrate their power, they will threaten to withhold those services. An adversary relationship does not necessarily lead to intensive conflict, but it does mean that the union will be on one side and management on the other side. Because there are two sides, like it or not, board members are management.

In industry, the labor relations process typically pits management (the have's) against labor (the have not's), and it is very easy for the ordinary citizen to side with labor. In public education, however, the underdog is not always labor. Teachers often are able to muster much more political clout than management. Even though taxpayers should identify with management quite readily, because it is their money that will pay for the settlement, only school boards are vulnerable to political pressure. Unions are private organizations whose only responsibility is to the vested interests of their membership. They have no responsibility to the public.

Boards members should recognize that some form of col-

lective bargaining was probably always inevitable. When it comes to a particular district, the fact that teachers want to negotiate items which were formerly management prerogatives does not mean that the board or superintendent failed. Teachers are led to believe that they are second-class citizens if they do not have a contract, and there is not much boards can do to counteract that philosophy.

Union recognition has been delayed in some districts, even in states with bargaining laws, but such delays are invariably due to special relationships or other circumstances and the evidence suggests that collective bargaining will be a way of life for most school officials. Law or no law!

Another key lesson is that labor peace cannot be purchased. Giving teachers what they want today to prevent having to negotiate a formal contract only creates new problems that will have to be faced later. Some of the worst contracts are found in states without bargaining laws and in districts that have tried to give benefits away to keep the union away.

Informal substitutes for bargaining—and the pitfalls

School districts that have avoided formal negotiations probably feel they have kept teacher unions from "taking over the district." Most districts, however, are bargaining with their teachers even if there is no signed contract. Meeting and conferring, discussing, communicating, and talking are euphemisms for bargaining in those districts that do not negotiate formally with their teachers. Such districts have already begun bargaining without the formality of a signed contract. A lot depends, of course, on what they are talking about. The comfort of informality invariably broadens the scope of issues raised.

School boards that are not engaged in a formal bargaining process probably think they can take care of everything and everyone with board policies. However, these negotiated policies can become a source of difficulties.

Because the board is not confronted with the threat of a formal contract, it is easy to confer with teachers about many different topics and issues, including curriculum, board policies, teacher salaries, budgets and district goals. Discussions cover a wide scope of topics, including many that the board would never dream of negotiating in formal bargaining. But this creates what is called "past practice." Once these districts are forced by law or by pressure to write a contract, they will sit down at the bargaining table and say, "Now that we're going to bargain, we're going to take away all those benefits." That won't work for two reasons. First, now that the union is representing teachers at the bargaining table, they cannot afford to lose any previous gains. Second, any neutral third party who may become involved will not grant teachers less than what they had before. This is why efforts to buy labor peace eventually cost more than formal bargaining.

School boards that engage in formal bargaining also need to use board policies, but not to keep the union away. Boards may bargain many different items relating to board-teacher relationships, but should continue to establish policies in areas that are beyond the scope of formal bargaining, such as teacher assignment, evaluation, transfer, and promotion. Policies should continue to play an important role in managing the district and in some cases can serve as an alternative to placing something into the contract.

It is important to remember that board policies and negotiated contracts are separate entities. The distinction between the two must be maintained or boards of education will end up negotiating all of their policies. (Would your board really want the union to help decide when board meetings will be held?)

Teachers and unions

Some board members have, out of frustration or inexperience, considered the unionization of teachers as inherently evil or non-professional. They blamed themselves

or the administration when their teachers turned to unions. In the vast majority of cases, however, the unionization of teachers was far beyond any control of the school board and administration.

State law—whether it requires union recognition or merely authorizes it—creates powerful pressures for teachers to organize. Even where state law is silent, the political strength of a local union is often abetted by the awesome clout of state and national affiliates to produce more pressure than any school board can resist.

Moreover, there are a number of social and demographic factors which cause teachers to unionize, many of which are beyond the control of local boards and administrators. For example:

- Unions provide a sense of collective power enhanced by the protection of laws and court decisions.
- The size of the school bureaucracy reduces lines of communication. Informal input isn't enough and unionization promises control over individual destinies.
- The increasing age and experience of teachers makes it difficult for the dissatisfied teacher to switch employers. A lack of mobility increases the need for security.
- The teaching profession includes more and more primary family wage earners, while an increasing dependence on two bread winners per family has driven the demand for wage and benefit increases.
- Taxpayers are resentful of increased school costs and demand evidence of results. Reduced funding or enrollment declines may result in layoffs or cutbacks that threaten job security.
- The job of the classroom teacher becomes ever more difficult, thanks to the climate of rebelliousness born in the 1960s and a declining respect for authority, the breakdown in families and rise in at-risk children, and the multi-cultural nature of classrooms across the country.
- Mandates for accountability and evaluation limit the academic freedom accorded teachers and subject them to

continuous scrutiny.

Economic, psychological, and security needs of teachers also are factors in their decision to support union strategy and tactics in local situations. The security needs of teachers are easily manipulated by skilled union organizers. Even the most benevolent and humanistic school board's unwillingness to grant union recognition or to meet contract language and wage demands become tools for the aggressive and skillful union organizer.

Board members find their roles frustrating until they learn to deal with teachers both as union members and as human beings. Efforts to give teachers more than the union does only intensify union demands. Efforts to break the union only increase tensions and unite teachers behind the union.

The board member must distinguish between employee relations and labor relations, so that each can be treated separately, realistically, and professionally. The ability to view the teacher's professional needs as separate and distinct from his or her human (union) needs keeps conflict and frustration to a minimum. Hopefully, this book will be a first step toward acquiring this important ability.

Some changes that bargaining brings

Observers of the collective bargaining scene have identified some changes that the negotiating process typically bring to a school district:

1) Collective bargaining has a leveling effect. The all-for-one and one-for-all concept drives unions to organize and try to get what they want through collective means. Most school managers believe this leveling effect results in mediocrity and it probably does to a certain extent. As policies are amalgamated into a contract and management is forced to treat all employees alike, there is some loss of individuality, creativity, and initiative. In fact, some creative energy is re-directed from the classroom to union ac-

tivities. Union leadership roles are often assumed by creative and gifted teachers. The recognition of their peers offers a stimulus and affords a promotional opportunity not available from management.

2) Individual teacher needs are replaced by group needs. This surfaces very quickly when fair share or seniority clauses are brought to the bargaining table. Both of these demands meet the needs of the union organization rather than the individual employee. Unions protect the weak (even the incompetent) to give security to the strong. It is their duty to protect every member in spite of the effect on educational performance.

3) Bargaining statewide tends to equalize differences among districts. Districts in one part of the state will have similar contracts, union goals, and objectives as those in other parts of the state. Local issues will surface but master statewide issues will be predominant.

4) Bargaining creates a new and important management function. It is not something that can be addressed with just the best interests of the district at heart, but requires sophistication and skill. School officials must confront bargaining with a complete understanding of what the process is all about. To acquire this understanding, there is no substitute for study and preparation. The management team must be armed with proper skills and relevant information. Adequate preparation and planning make a big difference in how smoothly the process goes, as well as in the final settlement. The results of bargaining will have a greater long term impact than almost all other school board decisions. Trying to get something removed from a contract is much more difficult than keeping it out in the first place.

The nature of school bargaining

Because collective bargaining in the schools has generally evolved in the pattern of the traditional industrial model, it tends to be an adversarial process dependent upon a balance

of power. (There are alternatives to the adversarial model, as will be discussed later, but they probably are not appropriate everywhere.) Few argue that the industrial model is ideal for a school district or any other public employer. In fact it has some serious flaws. Adoption of the model in the public sector is probably due to the fact that it is a known quantity that has generally been successful in the private sector.

The industrial model of labor relations begins with certain assumptions:

1) The employer has the wealth that the union wants for its members and the power that it wants for itself. A union is ostensibly created to serve the needs of employees. But unions, like all organizations, take on lives of their own with goals and agendas that differ from those of both the employer and the employees. A union acquires power by brokering benefits—promising and delivering.

2) In order to be successful in achieving its goals, a union must enjoy a near-equal footing with the employer at the bargaining table. Unless there is a balance of power between board and union, bargaining is a facade. Unions can boast various types of power, including the power to call a strike, the power to take legal action, or the power of political or community pressure.

3) In order to even exist, the union must have the loyalty of employees, or at least a sizeable majority of them.

These conditions are generally as true in the public sector as in the private, but there are some stark differences. In order to acquire an equal footing with the school board, the teachers union must have the weight of law behind it, either by statute or local bargaining agreement, or it must be able to bring community pressure to bear on the board through political connections or the threat of a strike. Because a successful strike depends upon unity or loyalty among union members, teachers unions typically work hard at earning loyalty. In other words, teachers unions must continually demonstrate their worth to their members, and that is

particularly true in districts not governed by state bargaining statutes.

A major difference between public sector and private sector unions is in the congruence of their goals with employer goals. In the private sector, the employer must make a profit to continue in business and the union must be careful not to kill the goose that lays the golden eggs—that is, it must not obtain so much wealth and power from the employer that the employer goes out of business. That constraint does not exist in the public sector. Teacher union goals often are not at all congruent with goals of the school board, although the union may make a great public display of its concern for students and quality of education.

It should be noted, however, that mature and secure teachers unions often adopt goals more congruent with those of the board. Immature or insecure unions never do.

Another major difference between the public and private sectors, of course, is that a school district cannot decide to go out of business and cannot routinely pass along increases in labor costs to consumers. Although the economic relationship between employer and employee is much the same in the two sectors, the relationship between employer (school board) and customer (taxpayer) is much different.

Still a third major difference between the public and private sectors is the relationship between owners and customers of school services and between union members and those two constituencies. In the private sector, those people who own the company usually are not the same people who buy the company's products or services. And members of the union are part of neither group.

In the public sector, however, the people who "own" the establishment (taxpayers) are the same people who use its services—and school employees are likely to be part of both constituencies. School employees help elect their own bosses (school board members) and can lead other "owners and customers" to bring powerful pressure to bear on those bosses.

These differences create considerable difficulty with the

industrial bargaining model for school boards and administrators.

The political factor

Clearly, what is called "collective bargaining" in the private sector is not necessarily the same thing in the public sector. Because school districts often are saddled with a bargaining process that combines labor relations, human relations and politics, school boards and superintendents find it difficult to represent the public interest and survive professionally. School boards and superintendents regularly survive the process, but the political aspect creates serious difficulties for them.

In its simplest terms, this means that if unions do not get what they want at the bargaining table, board members and superintendents can find themselves in jeopardy. If the politics of impasse or strike doesn't get the superintendent fired, then sometimes it's the loss of school spirit that often follows the strike or the teachers' refusal to maintain acceptable relationships with students and parents.

Even without the rigors of bargaining, superintendents can seal their own doom through neglect of faculty attitudes. Poor communications and other management weaknesses can set teachers against both the administration and the board. Today's teachers not only talk about their problems out of school, they organize campaigns to unseat board members and to remove the superintendent.

That leaves school boards and superintendents on the horns of this dilemma: How do they protect the public from the unions without making themselves the sacrificial lambs?

Some boards have said, let's forget the public and give the unions what they want. Other boards have stood fast against the union's demands and been ousted at the next election, soon followed to the sidelines by their superintendents.

Clearly, management survival in the face of massive political pressure has to be among management's top objec-

tives in labor relations. Fortunately many school boards and superintendents have demonstrated that they can indeed achieve the dual objectives of: (a) protecting the public interest at the bargaining table, and (b) protecting themselves against political tactics and the appearance of community support for the union. One answer lies in how management approaches the bargaining process.

The board and superintendent who take union demands as personal insults and who try to beat down the union in the eyes of their teachers invariably find themselves in the eye of a storm. On the other hand, those who view bargaining dispassionately and who do their best to understand the needs of both management and labor are most often able to avoid serious conflict.

The fact remains, however, that board members and superintendents who ignore the political nature of public institutions do so at their own peril. The rest of this handbook explains the respective needs of management and union and shows how board members can deal constructively with teacher unions and their political strategies.

Winning at the bargaining table

School board members must have a clear conception of what "winning" means in a labor relations context.

Does it mean avoiding a strike?

Negotiating the smallest possible salary increase?

Getting some restrictive language out of the contract?

Getting a settlement so school will start on time?

Winning can include any or all of these elements—or none of them, depending upon a lot of factors. One should not judge a labor-management relationship by whether there was a quick settlement or a contract favorable to the board. A quick settlement may be praiseworthy—but reserve your praise until you have looked at the contract. The board may have "given away the store."

A strike may seem reprehensible—but it may have been an unavoidable union tactic designed to rebuild the unity of

its members.

Community pressure that makes the board look good at the expense of the union may lead to premature celebration. An insecure union means more trouble in the future. One thing that winning does *not* include is making the union look bad.

Once employees have unionized, the board and administration must make up their minds to build stable and unemotional relationships with the unions. The school board's purpose, after all, is a solid educational system, a purpose that cannot be achieved without a stable, productive workforce, effective management and efficient use of resources. Those laudable objectives that guide the board in all its endeavors should also guide its hand in relations with unions.

Therefore, successful collective bargaining can probably be best described as a process in which:

- a contract settlement is reached without a strike;
- contractual agreements are within the board's parameters regarding economic benefit settlements and specific provisions;
- both the board and the union emerge looking good, as though each did its job competently and fairly.

School boards that fill their own roles properly and permit unions to be unions soon find a new equilibrium. A basic understanding of this educational dilemma called "labor relations" will make the realities less threatening and service on the school board less painful.

3. How bargaining works

For school boards and superintendents, the bargaining process includes these basic steps: Establishing ground rules, initiating proposals, and responding with counter-proposals. A fourth step emerging from the first three—determining what will be bargained—is probably the most important step of all.

Ground rules

One of the first steps in the collective bargaining process is the negotiation of ground rules to govern the behavior of both sides. Though each situation is different, the following questions should be answered in the ground rules if not prescribed by law or contract:

1) How often will bargaining sessions be conducted?
2) What should be the length of each session?
3) Who will serve on each bargaining team?
4) Will observers be permitted?
5) Will there be joint or separate press releases?
6) Where will sessions be held and at what time?
7) Is an agenda set in advance?
8) May outside consultants be used without consulting the other party?
9) Who keeps records and minutes? Are sessions to be tape recorded?
10) Will there be any guidelines for caucusing?
11) Who is responsible for preparing the final agreement?

These are just some of the questions which need to be answered before the start of contract bargaining. Some

ground rules are established by state law, and some negotiating relationships work well with no ground rules at all. Rules are most helpful when bargaining the first contract or if the two chief negotiators are unfamiliar with one another.

Initial proposal

By design, bargaining is a game in which the union is always on offense and management plays defense. That is, the union demands to gain what it doesn't have and management tries to retain what it already has. These roles change but rarely. Typical union strategy is to trade two things it does not have for one thing it wants.

Some observers suggest that school boards give too much to the union because they operate from a defensive position. So people ask, "Why don't school boards take the initiative and make the first proposal rather than counterproposing after the teachers make their demands?" The argument seems to make sense on the surface. After all, the best defense is a good offense.

Most experienced negotiators, however, believe that management should not make the first proposal for two reasons. First, the board of education already has what the union wants. Psychologically, it is better for both sides if the board allows the teachers to make the first proposal. The second reason wise boards don't make the first proposal is that they might propose giving something to teachers which the teachers would not otherwise have thought about.

School boards are free to originate proposals, of course, and they sometimes do when they must try to retrieve something previously bargained away. The retrieval posture is the only time a board has anything to gain from bargaining. It also is a very difficult posture, often impossible.

Boards most likely become aggressors at the bargaining table either when the budget must be cut or when restrictive contract provisions get in the way of sound educational or management practices. However, union negotiators are sure

to find such a posture unusual and unsettling and will probably use it to stir unrest among teachers. Even if the school board has something significant to trade for what it wants, it will probably be something the union thinks it should be getting anyway. Unions deplore giving; their job is getting.

Collective bargaining has been defined as a "zero sum" process in which management gives and labor gets. Unions are uncomfortable with anything else, which makes retrieval bargaining extremely hazardous to labor relations and community relations.

Board's counterproposal

After receiving the initial proposal from the teachers, the board's negotiating team should develop a counterproposal to be presented to the union's team at the next bargaining session. The board team's counterproposal should include items that management wants in the contract, and not be just a reaction to the union's demands. Every counterproposal should be written as an original document, using the board team's language and format. The aim is to get the union negotiator to use the board team's counterproposal as a point of reference. This helps move the contract language toward a management orientation, while minimizing the negative, reactive posture that comes from responding piecemeal to each union proposal. If management is forced to respond and argue every union proposal, then a truly defensive mode is taking place and every change will be perceived as a union loss.

It is not necessary to produce a counterproposal for each item proposed by the union. Deleting specific items which the board team believes to be non-negotiable or unnecessary is not only an acceptable practice but is also good strategy. Initial proposals that do not appear in the board's counterproposal have a chance of being forgotten by the union team. Even deleting items that the board is willing to include is good strategy because it allows the union to win them back.

Analysis of the union's demands is essential. One method is to dissect each section of the proposal and identify: key issues, objectionable language to be avoided at all costs, items which can be agreed to, compromise issues, and management's alterations. The counterproposal can then be developed as a result of the analysis.

Past practices: Management teams embarking on collective bargaining for the first time typically encounter a new and most troubling concept called "past practice." What that means, under labor laws in most states, is that bargaining begins with a foundation based on practices as they currently exist rather than with a blank sheet of paper. The concept of past practice can apply to any bargainable subject matter and can tie management to whatever formal or informal practices it may have engaged in prior to the advent of bargaining. Thus, if teachers were permitted to come and go as they pleased during duty-free periods prior to bargaining, it will be assumed that they still have that right under collective bargaining—unless the school board can negotiate a contract clause establishing otherwise. Once bargaining is required—by law or by signed agreement—management cannot unilaterally decide to limit teachers' freedom during their duty-free periods.

Past practice is usually a major consideration in states with bargaining laws, for such laws typically freeze in place practices that currently exist in each school district. Any effort on the part of management to alter those practices may be treated as a change in "terms and conditions of employment" subject to bargaining. Even in states without bargaining laws, school managers in districts with union agreements may find judicial rulings limiting their ability to make unilateral changes in practice outside the bargaining process.

School boards and administrators may need to face past practice as they develop counterproposals and bargaining strategies.

What should be bargained?

In states with bargaining laws that apply to public schools, attempts have been made to define the scope of bargaining (that is, what is bargainable?). The standard private sector definition is wages, hours, and terms and conditions of employment. The problem lies in determining negotiable "terms and conditions of employment."

Subjects most often negotiable are wages, hours, grievance procedures, methods of teacher evaluation, and methods of teacher removal. Items commonly considered exclusive management rights and, therefore, not subject to negotiation typically include institutional mission and program, level of funding, employee hiring, discharge and supervision, job assignment, organization, work force size, service and recruitment standards, and employment conditions for employees who are not part of the bargaining unit.

The negotiability of certain items is often subject to dispute, including parity in wages, class size, retirement benefits, fair share or agency shop, preeminence of a negotiated contract over existing laws, teacher preparation time, evaluation, textbook selection, employee inservice education, and school calendar.

It is probably fair to conclude that the scope of bargainable subjects continues to expand, due in part to school board willingness to discuss whatever issues the union brings to the table. More important, the courts and labor hearing boards in some states have opened up bargaining to virtually any topic one might imagine.

It also is a fair conclusion that, even in states with public sector bargaining laws, there can still be some disagreement over the scope of bargaining. Statutes may identify mandatory subjects which must be bargained and stipulate that bargaining must be in "good faith." In addition, some statutes itemize those subjects which may not be negotiated while others rely on unfair labor practice cases to differentiate between mandatory and permissive subjects. In states that follow the latter practice, such as Illinois, the courts or

administrative agencies assigned to make such determinations can expand or shorten the list of bargainable items. They also can clarify or confuse the distinction.

What must be bargained will differ greatly from what *should* be bargained and what a school board may be willing to give up at the bargaining table. In states without bargaining laws, the scope of bargaining is determined at the negotiating table. The board determines scope on the basis of what subjects it is willing to consider. For training purposes, the Illinois Association of School Boards separates the various subjects into: *minimals, probables,* and *avoidables.* **(See Table One.)**

Management negotiators generally agree that the right to hire, transfer, promote, and discipline employees should be treated as non-negotiable. Although these usually come up at the bargaining table, management may concede to procedures but should not bargain away the right to make final decisions.

Teacher unions generally hold that anything which affects the teacher in any way is negotiable. This interpretation is much too broad for management to accept. In fact, in the absence of a bargaining law, some state courts hold that discretionary powers delegated by the legislature to the school board cannot be diminished by a contract. Other state courts have ruled that one of the school board's discretionary powers is to enter into contracts if it so desires.

In general, the goal of management is to limit the scope of bargaining as much as possible for at least two reasons. First, education is a public function. The public's elected representatives must have final authority over the schools, including authority in hiring, transferring, promoting, and disciplining employees. A second reason for limiting the scope as much as possible is primarily a practical consideration. For boards of education, the bargaining process sometimes boils down to an effort to limit the scope as much as possible this year so there will be something to negotiate next year. The bargaining process for boards of education has become one of slowly bargaining away many of the

Table One—Typical Teacher Union Demands

(Definitions of many of these terms can be found in the glossary)

Economic Issues	Security Issues
Minimal Union Demands	
· Salary schedules · Extra-duty salary schedules · Insurance · Fringe benefits · Grievance procedure	· Negotiations procedures · Recognition, right to organize · Impasse resolution
Probable Union Demands	
· Hours worked per day · Days worked per year · Preparation time · Lunch periods · Retirement bonus/incentives · Work load · Leaves—illness, personal, leave of absence, union business, maternity, professional, unpaid · Class size	· Evaluation procedure · Discharge or termination · Discipline · Procedures for reducing work force · Union discrimination · Use of facilities · Seniority · Notification of assignments · Grievance arbitration · Dues deduction
Avoidable Union Demands	
· Non-paid assignments and duties · Hiring practices · Promotion and transfer · Use of emergency days · Fact finding or interest arbitration	· Academic freedom · Maintenance of standards (all board policies and past practices) · Inclusions (e.g. U.S. Constitution, state laws, board policies) · Discrimination · Administrator evaluation · Curriculum and program · Textbook selection · Pupil discipline · Fair share · Evaluation criteria · Broad definition of grievance · Staffing standards: pupil-teacher ratio, etc. · Professional qualifications · In-service training · Citizenship and constitutional protections · Student teachers · Committee assignments

decision-making powers which were formerly exercised unilaterally. Because unions will always need to win in negotiations to satisfy members, a gradual process of concessions will allow for wins but keep the simple contract from escalating into an exhaustive document.

The goal of teacher unions in contract bargaining, in general, has been to expand the scope of bargaining as much as possible and to include by reference such items as board policies, state and federal laws, and state and federal constitutions. Usually these items are offered as harmless verbiage that seems innocent enough. However, their inclusion will eventually lead to trouble. Although a school board is required to uphold both constitutional and statutory law, incorporating these laws in the negotiated contract puts the school board at double jeopardy—making state and federal laws grievable under the contract as well as actionable in court or before government agencies. Including school board policies in the contract tends to destroy a very important power of the board—the authority and responsibility to adopt policy governing the management of the district.

Contract vs. policy

There are important distinctions between board policies and the negotiated contract. Board policies may be researched and developed through a democratic process, and formal adoption can be accomplished only by vote of the school board at a public meeting. The negotiated contract, by the very nature of the bargaining process, is a bilateral agreement privately arrived at. When negotiated contracts include all policies (even if only by reference), the distinction between policies and contract is gone. Future boards of education may be unable to alter policies except through negotiations with the union.

In order to grasp the distinction between policies and contracts, it's helpful to understand their respective characteristics. Board policies are usually broad statements of intent which allow administrators to select the best ways of

carrying out the board's wishes. Negotiated contracts, on the other hand, should contain explicit language that allows little flexibility in implementation and little room for error in interpretation.

Because board policies guide all operations of the school district, they are heavily influenced by federal and state laws and regulations as well as rulings handed down by federal and state courts. More important from the standpoint of local control, school boards are obligated to reflect community values and needs in the development of policy. Board policies generally provide administrators with considerable latitude in making day-to-day decisions.

A negotiated contract, on the other hand, creates specific requirements and limitations in those areas of district operations relating to employees. The contract becomes part of the law that regulates the school board and administration. Ambiguities in the contract are not usually advantageous for the board of education and should, therefore, be avoided as much as possible. Administrators should interpret the contract literally.

Although the school board may try to withstand union pressure to negotiate board policy items, experience shows that some will probably creep into the negotiated contract. When this happens, the contract item supersedes board policy and any attempt to keep that item as a separate policy statement is an exercise in futility.* The policy handbook should no longer contain the written policy in its former spot, but should refer to the appropriate section of the negotiated contract. Attaching the contract as an addition to the policy handbook seems to be an appropriate step to take as more and more policies are pre-empted by the negotiated agreement.

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*Exceptions to this are the discretionary powers which the legislature expressly delegates to the board and which the board is willing to fight to retain in court. Even where the board improperly delegates a power through its union contract, the usual inclination is to honor the contract until it becomes intolerable—usually after board membership changes.

Even though there is almost a fatalistic recognition that negotiated contracts will continue to include more and more items which were formerly board policy matters, the board of education should continue to exercise the right to adopt appropriate policies. Individual contract items will continue to supersede individual board policies, but in policy areas untouched by the contract school boards usually retain the authority and the responsibility to adopt policies which have the force of law in the operation of the school district. They can lose that right by agreeing to incorporate or include the policy manual in either the contract or the grievance procedure.

Impact and mid-term bargaining

Collective bargaining is typically perceived as a periodic process of contract revision or renewal. That is, sometime before the current contract expires, negotiators for the school board and the union sit down to bargain a new contract or changes to the old one. And that may be all the process involves in states without bargaining laws.

However, in states with laws that require school boards to bargain with employee unions over terms and conditions of employment, board members and administrators usually confront some new and troubling concepts. The first and most likely concept to emerge is "mid-term" bargaining (or interim bargaining). Another is "impact bargaining." Both mid-term and impact bargaining have parallels in the private sector, but they probably do not arise there as often as they seem to in the school business.

Mid-term bargaining becomes a factor when school management decides to take an action during the term of a contract when that action involves a matter deemed negotiable under the law. The action may be in response to a new state law or to a budget crisis or simply a desire of the board to do something different. Examples might include altering class sizes, reducing staff, extending the school day, scheduling parent-teacher conferences after school hours, or

eliminating a program or course of study.

Because any board or administrative decision may involve a negotiable matter, some school districts find themselves engaged almost continuously in bargaining some issue or another even though a valid contract is currently in force. If a management decision involves issues that—by law or contract—must be bargained, the school board will have to bargain with the union before the decision can be made or implemented if the union demands to do so. Further, in Illinois and some other states, the board may have to bargain the decision's impact on terms and conditions of employment, even if the decision is purely an inherent managerial right.

Mid-term bargaining can be avoided if the union contract contains a proper zipper clause. A zipper clause functions as a waiver of union bargaining rights during the term of the contract, and is obviously an important clause for the school board to get in the contract. Even in a state without a bargaining law, a school board may be required to bargain an issue mid term if its current contract makes that issue negotiable and contains no zipper clause.

Impact bargaining arises where a state law or local union contract requires the school board to bargain the impact of management decisions. Impact bargaining should be distinguished from "decisional bargaining," another type of mid-term bargaining. The latter involves bargaining with the union before implementing a change in some mandatory subject of bargaining. In contrast, if a management decision does not involve a mandatory subject of bargaining, the board is free to make an unfettered decision; however, the board may have to bargain the effect that decision has on employees if the union asks to do so (impact bargaining).

In bargaining the impact of a managerial decision, the school board must entertain union proposals aimed at softening that impact. In a staff reduction, for example, the union might propose severance pay or continuation of certain fringe benefits. The school board, of course, is under no obligation to accept any of these proposals. In fact, it is

generally accepted that board negotiators must continue to bargain impact until both sides agree they have reached impasse or the legal requirements for impasse have been met. Under most laws, when impasse has occurred, the board's final position can be imposed.

Labor boards may differ in their requirements for the existence of impasse, and impasse standards often are behavioral as well as procedural. In general, impasse occurs when neither party is willing to make further proposals or concessions, sufficient time and/or meetings have occurred, and the parties have bargained in good faith.

The more broadly state law defines "terms and conditions of employment," the wider the range of board and administrative decisions subjected to both mid-term and impact bargaining. Further, in some states like Illinois, a school board may be required to bargain both the decision and its impact. For example, the Illinois Educational Labor Relations Board has held that a staff reduction involves both a mandatory subject of bargaining and has an impact on terms and conditions of employment. Therefore, while a school board is free to make a decision reducing staff, it must first bargain the decision and then bargain the impact of that decision if the union makes a timely demand to do so.

Impact bargaining and even some decisional bargaining becomes a ritual that board negotiators must go through with little by way of practical outcome. Under no circumstances can union officials give their blessing to a staff reduction, for example, so there is truly no room for negotiation over the decision. And in most mid-term negotiations, the union has very little bargaining leverage. However, both decisional and impact bargaining require good faith efforts to resolve differences and need to be taken seriously.

4. Alternative bargaining styles

As noted earlier, collective bargaining is traditionally a bilateral adversary process involving two different and conflicting sets of goals and aspirations. Through negotiations, the two parties attempt to accommodate their divergent goals, a process that works best in an atmosphere of mutual understanding and respect. When the process degenerates into personal rancor, threats and work stoppages, both sides lose.

Dissatisfaction with the traditional adversary bargaining model has prompted a growing number of school boards and unions to experiment with other ways of reaching accord. Some of these non-traditional approaches are worthy of emulation, some are not. All depend upon local circumstances for their success.

In today's public school environment, chances are good that the labor-management relationship in most school districts falls somewhere between the extremes of traditional and non-traditional bargaining. The school board member needs to be familiar with the full range of possibilities, because the bargaining relationship is usually in a constant state of moving toward one extreme or the other.

The traditional approach

The basic purpose of traditional bargaining is to remove power and authority from one party (management) and transfer it to the other party (the union). The vehicle is the contract, or negotiated agreement. Compromise and conces-

sion form the style in adversary bargaining, based on demands from the union and counterproposals from management.

The process works while lines of communication are open. But rancor between management and employees typically leads to bargaining through the news media and other forms of open and public dispute. The union strives to get public support on its side; the school board follows suit. Both sides lose and the school district as an educational institution suffers the consequences.

Unfortunately, public sector unions have with few exceptions adopted this private sector model.

In early stages of a bargaining relationship, some educators find the traditional adversary model distasteful and attempt to circumvent its realities. While some have found success in avoidance strategies, others have courted disaster resulting in huge union gains.

It is essential to understand that if the end product is a contract, then the process is collective bargaining regardless of what you choose to call it. Describing the bargaining process as a "forum for communications and cooperative problem solving," for example, often disguises the fact that real conflict exists. Such a description appeals to many educators and school board members who place a high value on cooperation and communication. However, cooperative decision making involves just one side—a team. In bargaining, there are two sides. Consequently, the terms "cooperation" and "bargaining" are contradictory if not mutually exclusive.

In some school districts, decisions are still made through cooperative non-bargaining processes. In more and more districts, however, decisions are made through bargaining. Once employees unionize and demand a contract, some form of bargaining is obligatory.

Traditional bargaining doesn't have to be adversary in its most negative connotation, however. All of us engage in adversarial bargaining in our every day lives when we buy cars and other commodities. We negotiate daily with col-

leagues and family members. We accommodate, compromise and concede in many activities.

Many, if not most, collective bargaining agreements are hammered out without impasse, strike, and hostility. Many bargaining issues can be resolved through integrative (problem solving) approaches. Other issues (such as wages) are usually resolved at the other end of the continuum—the distributive or rigid offer-counteroffer approach. In between are packaging and trading approaches. If the objective of *both* parties is to reach an acceptable agreement with the least amount of conflict, then resolution of most issues can be accomplished in a non-distributive fashion. Experienced negotiators prefer to take a non-confrontational approach and avoid distributive behavior as much as possible—at least to a point when final positions are too far apart for resolution and impasse procedures are required.

Skilled negotiators understand that one can disagree without being disagreeable and that agreements can be reached without resorting to antagonism, badgering, and personal attacks. As bargaining relationships mature, negotiators on both sides find a greater degree of comfort with problem solving.

To put it simply, teachers have a vested interest in their own employment and want a voice in decisions affecting this employment. Thus, a power struggle develops.

Non-traditional efforts

The usual outcome of traditional bargaining is that both sides lose a little. In an earlier section it was suggested that negotiating from a board perspective is a gradual process of losing as little as possible. Unions also feel a sense of loss because they don't get as much as they want. Rarely do both sides feel winners unless they both gain something very important that overshadows their losses.

Those are both acceptable results with long range benefits to the institution. If one party wins and the other obviously loses, then there will probably be a "get even" mentality from

the loser, creating strife and conflict in future negotiations. If union members feel that they didn't get a fair settlement or if their leadership wants greater support or recognition, then their leadership becomes aggressive and confrontational creating hostility and impasse. If management feels they have been "had," then they become rigid, regressive, and draw firm positions creating confrontation.

Most people want to avoid strife. Those in the political and public arena of education find that labor relations strife often conflicts with other goals, e.g. re-election, tax referenda, job security, and educational improvement. As a result, educators have long sought ways to avoid the political pressures of impasse and conflict that come with collective bargaining.

Districts with a continuing history of conflict have been most active in seeking alternatives to public displays of power. In those districts, the survival of both individual careers and the educational mission of the schools depend on finding an alternative to restore credibility with the public.

Moreover, the movement toward teacher empowerment as part of educational reform has re-fueled interest in non-traditional bargaining. Participative management and/or shared governance has been recycled as site-based or building-level management and integrated into the labor-management mix. Advocates claim that involvement in building decisions (including economics) increases communication, provides a vehicle for collaboration on the real mission of the school, and neutralizes the "we-them" concept of negotiations.

Skeptics argue that site-based management is a union ploy to gain control at the building level. As evidence they cite the union's unwillingness to relax contractual limitations on management and its insistence upon right of approval for any contract waivers or exceptions.

Whether site-based decision making is either or neither of the above, it has gained popularity among reformers and school officials. Some states have mandated site-based

models. If collaboration is working effectively in the site-based model, then that changing relationship and attitude should make collaborative labor relations at the district level more attractive to both management and the union.

There have been some encouraging trends toward collegial, non-adversary bargaining models. Some districts have been successful in finding processes that concentrate on integrative approaches while minimizing the distributive nature of the process. Success, if defined as an acceptable contract without conflict, has occurred when both parties agree that the old way wasn't successful and develop mutual ownership in a new process or procedure.

The importance of joint ownership in a new process can't be overstated because *any* process can succeed if all participants share the procedural and behavioral goals to succeed. If only the board or only the union desires change, then any process is doomed to failure.

(The fact that the union supports the traditional model while management does not probably explains most failures of alternative models!)

Process is certainly important in the public sector because how school officials are viewed by their constituents is often more important than what they do. Perceptions are often more important than truth or facts. Boards as political/public bodies need to look good. They want to avoid confrontation. Likewise, farsighted unions have come to recognize that economic gains depend upon public support and funding.

School managers also have other responsibilities and obligations. A collective bargaining contract has a great deal to do with the public's interest in good schools and the rights of students and parents. Therefore, in spite of the obvious advantages of non-traditional processes, school managers must approach such alternatives with caution. The product of any collective bargaining process is a contract. This product (contract) is the *most* important outcome of negotiating, because it affects the institution for a long time (maybe forever). Retrieving losses requires a long recovery

period and is rarely collaborative.

Unions also share the goal of a good contract. But their time frame for recovering losses (or no gains) extends only to the expiration of the contract when they can again seek what they lost (or didn't get) in the last round of negotiating—a very short recovery period.

Attempts to find alternative processes began in earnest in the early 1980s. A number of processes emerged, but the most popular was developed by a sociologist whose forte was conflict resolution and hostage intervention, not labor relations. Irving Goldaber created and promoted a model called "win-win," a program successfully marketed and copied throughout the nation. Win-win is a highly structured and elaborate set of ground rules that requires joint ownership and acceptance of certain restrictions (protocols). The win-win model in its most restrictive form involves:

- Approval by the leadership of both parties and formal agreement to the protocols prior to beginning (to create ownership of ground rules).
- Agreement that personal goals are of less value than the survival and needs of the institution.
- A neutral facilitator to oversee the joint session and enforce protocols.
- All members of the board and the superintendent participate in joint, marathon weekend sessions attended by all team members, who are arranged in a circle of chairs rather than across a traditional bargaining table.
- The teams are of equal numbers and usually large (10 to 15 people each).
- Subcommittees are formed to deal with issues (negotiate between joint sessions).
- A commitment to reach closure at the end of the preestablished final weekend.

Many variations of the win-win model have surfaced, some using portions of win-win as alterations to a more traditional approach. For example, the initial joint session where information, ideas and concerns are shared openly

has been used to open lines of communications prior to more traditional bargaining. It serves as preliminary sensitivity training for the parties and puts participants in a positive frame of mind.

The restricted time frame of win-win also has found favor with both traditional and non-traditional proponents. A process called "expedited bargaining" adopts the marathon bargaining sessions and predetermined closure time of win-win to replace the multitude of briefer sessions typical of traditional bargaining. Expedited bargaining may or may not involve other components of win-win.

Although the restricted time frame of win-win and expedited bargaining reduces the number of meetings, the total time spent may be equal to or greater than in traditional bargaining.

Other variations of the collaborative theme have been developed. Unfortunately some border on hucksterism and at best are commercializations created by entrepreneurs. The majority, however, are the offspring of win-win bargaining and are designed to provide a more collaborative environment. Some labels that have been used include: integrative bargaining, cooperative bargaining, dual concept bargaining, conceptual bargaining and process bargaining.

Common to most of these models are the following:

- Broader team membership
- Reduced reliance on a single spokesperson
- A restrictive time frame
- A firmly established time for closure
- Some form of non-confrontational interaction
- Emphasis on problems and solutions rather than positions
- Apparently open and honest communications
- Ongoing year-around problem solving

Before embarking on a cooperative approach to negotiations, the school board and administration must be able give a resounding "yes" to the following question:

Do we have the skill, ability and experience to exercise the same level of control over the outcome (contract) as we do in the current bargaining process?

If the answer is no or we don't know, then it would be wise to reject a non-traditional process—or to first take steps to acquire the skills essential for success.

School managers and school boards should not agree to trade a more amiable relationship or procedure for contract gains. The public interest demands that they not trade a bad product for a good process. On the other hand, if a school board has a history of confrontation and finds a real desire by the union to share ownership in the new process, then a non-traditional approach may be advantageous.

Collaborative bargaining may be a possibility in your district. But do not jump at it because it sounds good, is in vogue or worked well somewhere else. The decision to alter your bargaining relationship should be considered carefully and cautiously. If both process and product can be improved, of course, the organization will be ahead. But if process replaces product, then one problem is converted to another perhaps more serious problem.

5. The human element

The board's reaction

Boards of education take their responsibilities seriously. They may view it as a challenge to their authority when teachers first demand union recognition or when the union presents unreasonable demands at the bargaining table. Board members wonder why and are unsure of how to respond. One response is to try to buy peace by giving teachers what they want, hoping that the demands once met will go away. Another is to pretend to bargain or, in states without a bargaining law, to avoid the process completely. Other boards may respond aggressively, trying to demean the opposition and destroy the union.

None of these responses is realistic. First, there isn't enough money available to stop unionization. Labor peace cannot be purchased. Teachers, propagandized by unions, believe they are second-class citizens if they don't have a contract as good as others. Reacting with aggression or pretending to bargain by simply going through the motions only creates resentment and further strife.

Stalling tactics often create problems in non-bargaining districts that surface when the board finally agrees to bargain. For example, a board's past practices serve as the starting point for bargaining. Boards that give and give to reduce the demand for a written contract find they can't take back what they have already given when they finally are forced to negotiate. Such boards have little left to bargain with.

A more appropriate response for boards is to recognize that collective bargaining with teachers is a fact of life and

to prepare by becoming more sophisticated and more skilled in dealing with organized teachers.

Boards of education must recognize that the union—not the board—is going to represent employees. Although reluctant to give up its authority, the bargaining school board can no longer say that these are "our teachers" where terms and conditions of employment are concerned. Boards represent the management viewpoint for those issues that are negotiated. They have to recognize that when something is given to teachers, the union gets the credit—not the board. If the union does not get the credit, it looks bad in the eyes of its members. And that is going to create problems, because union leaders must have the support of their members (including dues).

Successful school boards allow the union to win for their teachers about what they would have gotten anyhow, but let the union take the credit. That's successful bargaining from a management point of view, even though it destroys the concept of the school board doing good things for teachers and students. In the eyes of the teachers, the union is going to get credit for all the work done by the board, and the board will have only the privilege of going to the taxpayers to obtain the funds necessary to finance the negotiated package. School boards and administrators then confront the reality that they must manage by policy and contract. This reality comes etched in stone—a policy can be changed anytime by a school board vote; a contract can be changed only with union consent or by a court of law. At the bargaining table, boards of education should try to retain their authority and their options in decision making, but the issues on which they can make unilateral decisions become fewer in number each year.

Constraints on bargaining

What do teacher unions want? In general, they must pursue all they can get. To justify its existence and retain the allegiance of its members, the union must get more each

year. How much more will depend on the expectations of the membership.

Common union objectives include more economic benefits, more security, and more power. Because all of these items have—prior to collective bargaining—been determined by unilateral action of the school board, anything the union can get is more than they started with. In many cases, as long as they obtain more each year, the members believe that the union has done a good job.

School board members new to collective bargaining need to recognize the basic differences between the public sector and the private sector. Some of those differences are presented in **Table Two**.

Human relations and labor relations

School managers often confuse human relations with labor relations. Their thinking is that "maybe if we deal on a human level the need for a union will disappear." Humanistic board members and administrators are easily confused by the distinction between human relations and labor relations. They try to make human relations programs replace labor relations, even though the two are distinctly different, incompatible, and serve different purposes. Basic differences between labor relations and human relations are listed in **Table Three**.

Humanistic managers who "play" bargain typically produce a terrible contract covering everything imaginable, unheard of benefits, and a vocal, successful and domineering union. Human relationships in the schools will not necessarily be improved—people will not have grown and developed or the district's goals met. Bargaining can't supplant human relations efforts any more than human relations programs can resolve labor relations disputes. Only the union organization itself grows fat and healthy when management is naive and gratuitous.

When management finally discovers what it has done and tries to recoup its losses, open warfare develops. Then both

Table Two—Private Sector vs. Public Sector

Private Sector Company	Public School
1) Selects its target populations for marketing products.	1) Must accept clients who live within the district boundaries.
2) Prices can be increased by management.	2) Citizens vote on most tax increases.
3) Can change its location, seeking more favorable work force.	3) School district can't move.
4) Can go out of business if unable to meet union demands	4) School district stays in business no matter what happens (almost).
5) Can share profits with workers.	5) Schools have no profits to share.
6) Customers select and pay for the products or services they want.	6) All citizens pay for school services, whether or not they use them.

Table Three—Human Relations and Labor Relations

	Human Relations	Labor Relations
Process	Consensus	Adversary
Agenda	Problems and Needs	Demands
Arena	Personal-Humanistic	Legal
Result	Change or Development	Contract Obligation
Emphasis	Self-actualization and Growth	Economics and Security
Goals	Internal (for the school)	External (for the union)
Participants	Individuals	Union
Location	Local Issues	Statewide Demands
Benefits	To organizational goals and clients through better programs	To union and its members through increased benefits, power, security

labor relations and human relations suffer, a situation that could have been avoided if the two processes had been treated separately from the beginning.

Employers adopt destructive strategies for a variety of reasons: Bargaining is new and unfamiliar; change is threatening; their authority is challenged; their self-interest is threatened; they have to adapt; egos are involved (how could they do this to us?); they may feel they are being punished for past failures. Employers would be much more productive if they accepted the reality of unionization and bargaining and spent their efforts in developing strategies, plans, tactics, and skills necessary to bargain effectively.

The importance of credibility

Credibility is the tie that binds school board and community. Regardless of any differences of opinion that might separate a board and community, real problems do not begin until the community decides that the board isn't being honest.

The difficulty presented by some teacher union leaders is that, even if they know the board is telling the complete truth, they may still try to destroy the board if it's in their best interest to do so. The union leader, as distinguished from the rank-and-file teacher, is more than an adversary across the bargaining table; by job description he's an adversary, period. Organizing a union is a political process, and part of the organizer's job is to destroy the credibility of management. Loss of credibility usually means loss of job effectiveness and, maybe, loss of job. Even with mature unions credibility attacks are part of the strategy at impasse, particularly if a strike occurs.

Managers in the private sector understand this and go to some pains to ensure that boards of directors and shareholders get the management viewpoint when workers strike. The management of General Motors may not have much credibility with employees when it comes to bargaining issues, but they surely have credibility with company

owners. Private sector managers are rarely fired because of what employees say or do.

In the public sector, the public is the owner and employees are a part of the public-owner group. The shareholders (taxpayers) have diverse interests. Parents may believe the board should give teachers whatever they want in order to keep them satisfied and keep schools open. Older residents or large property owners, in contrast, may say, "give them nothing and make it retroactive." An economic interest is only one of many variables when citizens choose sides. Having kids in school for babysitting reasons is a very powerful economic motive for parents to apply pressure on school boards regardless of whom they support on the issues.

Building credibility

For a school district, good community relations begin with good staff relations. Teachers and other employees are regarded by their friends and neighbors as experts on all school matters. Research shows that custodians have more ready listeners than do principals or superintendents. If teachers and custodians are to serve as ambassadors of goodwill, boards must see that they have all the facts. When the community gets different versions from administrators and teachers, it's a rare superintendent who can marshal more public support than can the combined efforts of the faculty.

Superintendent survival, therefore, may depend upon employee attitudes as much as upon the school board. If that's the case, what can the superintendent do about it? What can the board do to protect the superintendent?

The same answer comes back again: Establish and maintain credibility. The superintendent who tries too hard to make teachers like him will fail, because people can love—but not respect—someone they can push around. The one who views teachers as enemies will also fail.

Teacher militancy and unionism force school managers to balance benefits for constituents (students and taxpayers)

with benefits for employees. In the past, the shrewd administrator could play both ends against the middle, devising a school budget according to the superintendent's priorities and still keeping everyone relatively happy. That isn't so easy when teachers begin talking in negative terms to friends in the community or fighting for "a piece of the action."

Credibility today depends upon effective, action-oriented administration and communications that correspond accurately to the facts. If boards aren't going to give teachers a share in decision making, they must say so and mean it! If they are, they must plan carefully, do it well, and mean it!

Credibility for the board and superintendent alike boils down to this:

- Know what you mean;
- Say what you mean;
- Mean what you say.

6. Preparing to bargain

Bargaining preparation is crucial. Over the past few years, teacher unions have made substantial inroads into board power and authority largely because of their superior preparation. For board members, adequate preparation for bargaining includes acquiring knowledge about unions, selection of a negotiating team, and pre-bargaining planning.

Union preparation

The superior preparation of unions is widely recognized and can be attributed to at least two factors. First, local teacher unions generally enjoy more continuity of leadership than boards do. Some teachers get deeply involved in union leadership and bargaining. This involvement becomes almost a second job.

School boards also get extensively involved in bargaining. However, board members do not serve on boards for as long as teachers serve as teachers. In many states a board member's tenure is roughly equivalent to the amount of time required for a teacher to acquire tenure.

A second factor is that teacher unions have been interested in bargaining longer than management has. Some boards didn't believe that teachers were serious about bargaining until their state passed a bargaining law By that time, the unions were already geared up for negotiations and boards were scurrying around for advice and training. Superior financial resources also play a big role in providing unions with their advantages. Unions can purchase expert training and counseling, as well as the services of experi-

enced negotiators. Union dues are substantial and provide at-the-table negotiators, attorneys, and research services not available to local school boards. Boards should understand that this union expertise is at their negotiating table even if not physically present.

Unit determination

In states with bargaining statutes covering public school employees, selection of an exclusive bargaining representative is specifically covered, step-by-step. Typical procedures include: 1) a formal election to choose the exclusive bargaining representative (usually one of the mandated options is "no representative"); 2) election to be conducted by a state body, such as a Public Employment Relations Board; 3) time requirements and preliminary petitions relative to the election process; 4) the sharing of election costs; 5) a decertification process to change or eliminate the exclusive representative, and 6) the makeup of the bargaining unit (who is included in the unit).

School districts in states without a bargaining statute are not required to follow specific procedures for determining the exclusive bargaining representative. Boards of education are free to establish their own criteria for the selection. Many boards follow a procedure similar to that followed in the private sector (which most statutes are patterned after). Other boards simply ask for evidence that the petitioning union is truly representative of the teachers. This evidence is usually in the form of union membership, and boards may require more than the minimal 50 percent membership as the criterion for deciding that the particular union can serve as the exclusive bargaining representative.

Challenging who will be included in the bargaining unit is one continuing source of conflict, even in states with statutes which supposedly cover the question. The primary arguments center on management and/or supervisory personnel and confidential employees. While there is general agreement that supervisors and confidential employees

should be excluded from rank-and-file employee bargaining units, there is considerable disagreement about which specific jobs fall into these categories.

The Illinois Association of School Boards has identified management and supervisory positions as those which require their incumbents, among other things, to act or recommend action on behalf of the school board with respect to any of the following: hiring, assigning, transferring, promoting, evaluating, rehiring, or failing to rehire, laying off or recalling, or disciplining of any employee or implementation or administration of the collective agreement at any level in the organization or adjustment of grievances at any level. Confidential employees are those who are privy to the employer's labor relations information or strategy. These definitions mirror many statutes, although statutes also typically require that at least 50 percent of an individual's time be spent in those activities in order to be exempt from the bargaining unit.

Each state with a bargaining statute usually has its own criteria for determining who is to be included in the bargaining unit. Disputes arising from this question are channeled through an employment relations board and, if necessary, through the courts. Sometimes it's simpler to negotiate the issue with the union in exchange for consenting to the election. In states without a bargaining statute, the question is resolved at the bargaining table, sometimes with assistance from the courts.

Selecting the negotiating team

As union and board prepare for bargaining, each side must select a negotiating team. This decision is critical because interaction between the two teams influences the outcome of bargaining.

In general, the board of education should not get involved in the selection of the union negotiating team. (Such involvement may be an unfair labor practice.) Unions, of course, would be well-advised to select representatives who are

competent and who have the authority and credibility to negotiate for the unit. Management representatives appreciate competency on the opposing side of the table because it facilitates the bargaining process.

There is considerable disagreement among management negotiators as to what constitutes an ideal negotiating team. Composition of board teams varies all the way from board members only to administrators only. One fact is certain: An ideal team in one situation may not be an ideal team in other situations. Each board of education should assess its own bargaining environment and then choose the team which will work best.

A difficult question is whether board members should serve on the team. Bargaining is certainly an administrative activity and policy setters are cautioned not to administer. However the presence of a board member may bring some credibility to the table and in some smaller districts board members may be the only people available who are not part of the faculty bargaining unit. If board members are willing to spend the time and accept the political ramifications, then they can be a valuable source of credibility, especially in communicating back to the full board.

Negotiating teams should contain at least three persons but ideally not more than five. Fewer than three limits the ability of the team to relate to various aspects of the district's operation. More than five team members may be cumbersome.

Selecting the chief negotiator

Selection of the chief negotiator is probably the single most important decision to be made regarding the composition of the management negotiating team.

Who should serve as the chief negotiator? Although there are varying opinions, most authorities agree that neither the superintendent nor any of the board members should serve as the chief negotiator. An outside professional or a central office administrator probably should fill this important role.

Whoever is selected should be skilled or should receive extensive training. If a state bargaining law exists, then it is imperative that the chief negotiator know the law and its effect and the impact of labor board decisions.

One question often asked is, "Should the chief negotiator be an attorney?" The answer is that bargaining competence is more important than general legal knowledge. Negotiating teams should always have access to legal advice, but it is not necessary for the chief negotiator to be an attorney, nor is it necessary that an attorney be on the bargaining team. One word of caution: Do not place the board attorney on the negotiating team unless he possesses expertise in collective bargaining and labor law. If the board does not have a professional negotiator, the school labor attorney should be consulted for legal advice before the bargaining team agrees to any contract language and should review any contract before the board adopts it. The selection of a novice to negotiate no matter how well intentioned usually results in disaster.

A primary reason for selecting the chief negotiator prior to the selection of any other team members is to allow the negotiator some input into the selection of the other team members. Other team members should be chosen to complement the abilities of the negotiator. Team members must be able to work together toward the common goal of a good contract for the board. The other team members may be selected from central office administrators (not the superintendent, unless he is the only central office administrator), principals, supervisors, and board members. Board members should only be chosen in districts where, because of size or a lack of expertise, there are not enough qualified administrators or supervisors to compose a team or where board member feedback to the total board is necessary. As long ago as 1970 the National School Boards Association passed a resolution at its annual convention stating: "The NSBA urges that school board members do not directly participate in the technical day-to-day negotiating proceedings; rather, they should obtain skilled professionals to

negotiate for the board."

Management team planning

Planning and preparation prevent mistakes and save the board from later embarrassment. Over-preparation is rarely a problem; under-preparation is often a problem.

One way the team can prepare is to assemble data and information regarding bargaining developments outside the district. These should include such things as economic packages bargained in other districts, contract language used in other districts, legislative developments regarding school funding, and the results of hearings or court cases which might influence the local contract. However, be careful in using contract language from other districts. You may be looking at their mistakes or at issues or benefits not necessary in your situation.

Another step in planning is the analysis of union demands. Often, union demands are delivered to the board of education prior to the initial planning. This gives the management team an opportunity to analyze those demands and plan strategies as the counterproposal is being readied. Analysis includes identifying items or clauses which can be agreed to rather readily, identifying items or clauses which are unacceptable, and developing compromise language proposals where desirable.

A third step in the preparation process is to determine parameters and develop strategy. In planning sessions with the board of education, the bargaining team should obtain directions from the board relative to economic and non-economic parameters. Where possible, board directions should allow room for maneuvering and negotiating. Rigid parameters make negotiating difficult and limit the team's ability to reach agreement with the other side. At the same time, if there are issues on which the board desires little or no compromise, the team should know it. Negotiations between the board and its negotiating team sometimes turn out to be more difficult than bargaining with the union. The

management team must know the total board's position on the crucial items and recognize that early ideal positions may change during the process. More than one management team has negotiated a tentative contract only to discover that it had misinterpreted the board's desires. Preliminary planning and constant feedback provide the foundation upon which the management team's credibility is built. The greater the credibility, the smoother negotiations will proceed.

7. Roles and responsibilities

Role of the school board

As boards of education become involved in collective bargaining, they encounter some new roles and responsibilities for themselves and their administrators. They also encounter a relationship with a new kind of school expert—the chief negotiator.

In general, the role of the board of education is to engage in planning activities that lead to a reasonable contract with the union. Planning includes developing goals, objectives, and parameters for the negotiator. One of the most important steps is selecting the negotiator who will speak for the bargaining team. The board should then select the remaining members of the team, in consultation with the superintendent and chief negotiator.

During the negotiating process, the board and the negotiating team should maintain close communication. Usually this is best accomplished through the superintendent or his designee, who works closely with the bargaining team in addition to regular duties as chief executive. Sometimes communication can be handled best by the chief negotiator or the entire team dealing directly with the board. The total board should not get involved in at-the-table negotiations with the union. Even more important, individual board members should resist any impulse to communicate directly with the union unless so authorized by the total board.

Initial communications between the board and its bargaining team provide the team with the goals and objectives which the board would like to pursue. The board will want to establish some parameters to guide the bargaining team.

There should be some flexibility, but there should be a frank indication of which issues and dollar amounts the board feels most strongly about. As negotiations proceed, the board and team may have to modify their initial position and discuss which items the board is willing to take to impasse proceedings and which are important enough to risk a strike or take to arbitration. At some point in the process it may be necessary for the board to update and revise its original parameters. Boards should not, however, get into the habit of intentionally withholding concessions from the bargaining team which the board planned to allow into the settlement from the beginning. Such a practice weakens the credibility of the bargaining team, and the union will forestall serious bargaining until the board reveals its real bargaining positions or the union may end run the team to bargain directly with the board. Board members must have enough confidence in their negotiating team to entrust team members with their real feelings and positions, which may often change as the process unfolds.

One of the goals of the chief negotiator and the bargaining team is to negotiate a contract which the board will ratify. If communications have been regular and open between the board and the team, there should be little doubt that the agreement will be ratified. Boards, however, are obligated to carefully review the tentative agreement prior to ratification. If any part of the agreement is not satisfactory, the board retains the right to withhold ratification. Sometimes the unsatisfactory portion can be changed to the mutual satisfaction of the board and the union without returning to the negotiating table. In some rare cases it may be necessary—although extremely dangerous—to send the bargaining team back to the table to obtain a more favorable agreement. The decision to withhold ratification and send the bargaining team back to the negotiating table should be very carefully deliberated, and if possible avoided because the consequences are potentially damaging. Withholding ratification over a major item of the contract suggests that the board and its bargaining team have not been com-

municating very closely and can destroy the credibility of the management negotiating team.

The school board's role in labor relations is outlined in **Table Four**.

Role of administration

The basic role of the administration is to provide resources, information, data, and general all-around support for the school board and the bargaining team prior to and during negotiations. Central office administrators as well as building administrators may be called upon to support the process by:

1) Identifying portions of the current agreement which make contract management difficult;

2) Gathering data from school districts with similar characteristics which indicate the direction settlements are taking;

3) Developing facts about school operations which will be affected by any agreement (salary and fringe benefit costs, etc.);

4) Serving as consultant to the management bargaining team relative to any proposals being made for the new contract;

5) Serving as a permanent or temporary member of the bargaining team; and

6) Protecting the confidentiality of the board's strategy.

When the contract goes into effect, central office administrators and building principals should be put through contract management training to learn how to deal directly with the negotiated agreement. The contract has numerous implications for management of the schools and programs. The chief negotiator should help the administration ensure that the contract is administered fairly and consistently.

Building level administrators are vitally important to the bargaining process. They alone will implement the contract on a day-to-day basis. They, therefore, must be involved in developing bargaining goals and strategies and must be

Table Four—The School Board's Role In Labor Relations

As Policy Setter

- Develop parameters based on district goals.
- Select negotiator and procedures.
- Insist on employee relations goals and objectives in bargaining, in contract management, and in human relations.
- Understand unionization.

As Individual Board Members

- Develop basic understanding of bargaining.
- Distinguish labor relations from human relations.
- Don't be co-opted or used by the union to further its goals.
- Realize that the board's public position in labor disputes must be unanimous.
- Protect the confidentiality of the board's strategy.
- Don't play mediator.

At Impasse

- Understand and expect pressures.
- Establish a unanimous position with one spokesman.
- Know the legal limitations of individual board members.
- Don't stand alone; present a united school board position and get community support.

trained to administer the contract. Principals should also be represented on the board's bargaining team. If not, the impact of bargaining issues on the school will not be carefully considered and the contract will be poorly administered.

It becomes even more important to obtain input from principals and provide them with feedback during the bargaining process if they choose to not be represented on the bargaining team. Principals must feel some ownership in the negotiated contract if they are to manage it effectively. Moreover, principals who are left out of the process have been known to form their own unions to protect their interests.

Role of the negotiator

One the of tenets of traditional collective bargaining is that one person should be designated to speak for the bargaining team. The person so designated should be the only one responsible for across-the-table negotiations. The designee could be any person on the bargaining team, but it is usually better to identify the chief negotiator prior to the selection of the remainder of the team.

The chief negotiator must be flexible, courteous, honest, patient, and empathetic if negotiations are to be positive rather than negative. The negotiator must possess analytical and verbal skills and, most of all, be a skilled "listener." In addition, the negotiator must understand education as well as collective bargaining and labor law. Knowledge of or access to laws, court decisions, and arbitration rulings and interpretations are essential.

What is the role of this chief negotiator? First, the negotiator should recommend, subject to board approval, the other team members. As leader of the team, the negotiator is expected to assign specific responsibilities to team members, solicit ideas from them, and make certain that they understand the roles assigned.

Once the bargaining team is selected and assigned, the negotiator orchestrates the management team's performance during the negotiating process. Table tactics and strategies will be directed by the negotiator with the ultimate aim of obtaining agreement on a contract within the parameters established by the board.

In addition, the negotiator should be skilled in the construction and implications of contract language, so that problems in the existing contract can be modified and future problems avoided.

Finally, the negotiator (if not a professional) should recognize when it is time to call for assistance, especially legal assistance. The negotiator is not expected to possess all of the answers for every contract proposal, but should feel free to contact appropriate resource persons when there is a

question to be answered. Besides labor relations professionals, state school boards associations can also serve as a resource to the negotiator and the bargaining team.

The decision whether to obtain the services of an outside negotiator or train someone on the staff is the first and maybe most important decision the board will make. This decision is best made by first analyzing the skills, experience, and abilities of the local staff and to determine whether the conflicts inherent in the bargaining process will diminish their effectiveness in their day-to-day jobs. If no one locally has the ability or interest or if role conflicts will be detrimental to their regular job performance, the board will find that its needs are best served by obtaining qualified assistance. The negotiated agreement is too important to be negotiated by someone ill-prepared and unfamiliar with the process.

The role of the community

The subject of "community involvement" in teacher bargaining remains a difficult issue. On the one hand, the industrial model of collective bargaining requires privacy in order to work. The parties must be able to discuss proposals freely, exchange confidences, make tradeoffs, and back down without losing face.

By the same token, school boards are expected to represent the best interests of their communities. The actual conduct of bargaining is an administrative function, but the school board is expected to establish guidelines and to approve or reject the final contract based on what is best for the school district and its constituents.

On the other hand, many parents and taxpayers feel a loss of control over the destiny of their schools. They see their school boards surrendering authority over educational and financial decisions to the unions. If student services are cut to finance higher teacher salaries and decreased workloads, then a credibility gap begins to open between the school board and the public. Citizens see costs going up and services going down. Thus, there is a growing concern among

many citizens that they—as well as management and labor—should be present at the bargaining table.

Although at least one state (Florida) has gone so far as to mandate bargaining in open meetings, both school managers and unions tend to resist public involvement in the bargaining process. The industrial model of closed bargaining between expert negotiators represents a known quantity. Both sides can look to the experience of private sector labor relations for guidance.

Where the school board enjoys a good relationship with the public and vigorously defends that relationship at the bargaining table, the results of closed bargaining are generally acceptable to the community. Where the school board fails either to recognize public sentiment or to defend the public interest, the contract settlement arrived at privately risks public disaffection. And public dissatisfaction destroys credibility.

Closed bargaining, of course, does not alway remain closed. When negotiations break down and the union turns to the public to seek support, the public will become directly embroiled in the dispute.

The complexity of the labor-management relationship in education is compounded by the fact that both sides sense the importance of "good PR" when negotiations reach a stalemate. Unlike bargaining in the private sector, school bargaining is heavily influenced by the need for public approval (or the fear of negative public opinion). Teacher unions, in particular, employ a wide array of communications strategies in order to generate public support when teachers anticipate striking. How the board reads public opinion often determines the ultimate outcome of a strike and the board that misreads the sentiments of its community may agree to a contract settlement that the community does not approve of or cannot afford.

What striking teachers fail to realize, of course, is that a strike often says far more about their priorities than mere words can begin to offset.

School boards, too, frequently fail to accurately under-

stand public attitudes and the impact that their actions have on those attitudes. Consequently, citizens are sometimes subjected to biased opinions from both sides, specialized information that is intelligible to only a few, or a running barrage of charges and counter-charges. Yet, public attitudes toward the parties are determined far more by their actions than by their words. Whether the subject is bargaining in general or a stalemate or strike, the parties demonstrate by their deeds how they feel about the public, the schools, and their labor relations. Boards are much more vulnerable to public pressure than unions because their meetings provide a forum for expression of discontent.

Nationwide surveys of public opinion show that labor relations ranks very low as a topic that people want to know about. Citizens are much more interested in student progress and in educational programs and their costs. There is much evidence, however, that the interest of parents and taxpayers comes quickly alive when schools are closed by a strike or when the school board agrees to a contract settlement that curtails parental rights or forces program cuts.

Obviously, school boards are well advised to strive for contract settlements consistent with community sentiment and to keep the community informed of their labor relations objectives.

8. Disputes

Although the goal of the negotiations process is to reach agreement and then live by that agreement, a dispute can arise that results in an impasse. This can occur during bargaining or be produced by a grievance during the implementation of the contract.

There are several options available in resolving an impasse during the bargaining process. In states with bargaining statutes, the steps to resolve an impasse are usually prescribed by law. Districts operating without a state bargaining law are generally free to decide at the bargaining table which impasse resolution steps will be adopted.

Mediation

The first step usually prescribed or selected is that of mediation. Mediation involves selecting an impartial observer, usually someone with mediation experience, to assist in bringing the two sides together. There are no decisions rendered by the mediator; everything is advisory. The mediator does not make judgements. The mediator's role is to persuade the parties to modify their positions and to provide ideas and suggestions to bring the issues to closure. If the two parties decide they can reach agreement during mediation, the impasse is resolved. Sometimes the mediator is successful in getting one or both sides to move closer to an agreement, but not quite enough for an actual agreement. Other times the respective positions are so rigid that there is virtually no movement by either side. If an agreement is not reached, then the impasse resolution process usually moves to the next step that is prescribed or agreed upon.

Fact-finding

Fact-finding could be the next step, although many negotiators on both sides of the table are not enthused with any step beyond mediation. This involves selecting a mutually satisfactory fact-finder, either a neutral individual or a three-member panel (one from each party plus a neutral chairperson). The fact-finder conducts an investigation of the situation in an effort to identify all of the issues still unresolved. Depending upon either the law or the bargaining agreement, the fact-finder will either point out potential settlement possibilities or make a precise recommendation for resolution of the impasse. If both parties accept the fact-finder's recommendation, the dispute is resolved. Neither party, however, is bound to accept fact-finding recommendations. The fact-finding step is purely advisory However, refusal of the fact-finder's award usually results in poor public relations and a weakened position.

Arbitration

If mediation and fact-finding do not produce an end to the impasse, the next possible step is arbitration. Arbitration is not popular with boards of education, because it sometimes allows a neutral third party to make decisions which rightfully belong to the board. There are several types of arbitration which operate in both the private and public sectors:

1) **Interest arbitration** refers to arbitration during contract negotiations. Interest arbitration is voluntary when both parties have to agree to submit disputed issues to arbitration and is compulsory if required by law. Binding arbitration means that the two parties are bound to follow the decision of the arbitrator. Advisory arbitration means that the two parties are not bound to accept the arbitrator's decision. Fact-finding and advisory arbitration are essentially the same.

2) **Grievance arbitration** refers to the use of an arbitrator to interpret the meaning of the contract when a

grievance is filed, claiming a violation of the contract by the employer.

Interest arbitration is used to resolve impasse during contract bargaining. Whether the arbitrator's award is binding or advisory depends upon the law or previously agreed upon procedures. Binding arbitration shifts decision making authority away from the board to a third party and is, therefore, thought to be a serious encroachment upon school board authority.

While grievance arbitration is rather common in school board contracts, interest arbitration is rare unless prescribed by law.

Grievances and grievance procedures

Disputes between teachers and the school board which arise from the implementation or interpretation of the negotiated contract are referred to as "grievances." Of course, a teacher might have a complaint about almost anything connected with the operation of the schools. However, formal grievances and grievance procedures should be limited to disputes directly related to the implementation or interpretation of the agreement. Language to limit the definition of a grievance to violations of the collective bargaining agreement should be included in the negotiated contract so that grievances cannot be extended to board policies, rules, and regulations.

The grievance procedure is a tool the union uses to enforce the contract. As with most tools, the grievance procedure is used and abused. Teacher unions have been known to politicize the tool to harass particular administrators. They also try to broaden the scope of the contract by grieving things not already in the contract, unless proper contract language can restrict this tactic. Some grievances are simply political, either the strategic need of the union to express itself or appease a particular member(s).

Basically, the grievance procedure provides an orderly process for the handling of grievances brought by a teacher

against the contract administrator. The grievance procedure should include the definition of a grievance and specific steps to be followed to achieve a resolution of the dispute. Each step should be accompanied by specific time limits which keep the process moving while allowing the administrator at that particular step enough time to make a decision. The procedure should also include specific provisions for appeal and identify the final step, whether it be the superintendent, the board, or arbitration. If there is an arbitration step, then it is unwise to have a board step which will substitute a political response for the required technical interpretation. The astute contract manager will solicit legal and board input early in the process. Resolution of grievances should occur as early as possible.

Strikes

Most state supreme courts which have made decisions regarding the legality of strikes in the public schools have ruled that strikes are illegal in the absence of specific legislative authorization. A few states have taken care of the question legislatively by authorizing a procedural or "limited right to strike." In Illinois, for example, a strike is not permitted by law except where:

- employees are represented by an exclusive bargaining agent;
- mediation has been used without success;
- at least five days have elapsed after the union has given a notice of intent to strike;
- the bargaining agreement has expired;
- unresolved issues have not been submitted to arbitration.

Most state legislatures, however, have either ignored the question or specifically stated in the bargaining statute that strikes are illegal. The strike is still a weapon which is used by teacher unions in many states, in some cases even where prohibited by statute. *Chapter 9, When Teachers Strike,*

discusses this subject in more depth.

Impact of state laws

Some state laws add constraints and procedures to the resolution of school bargaining disputes by prescribing impasse procedures that culminate in either strike and/or third party intervention. Some laws create special labor boards empowered to determine whether a school board or union has committed unfair labor practices, such as bargaining in bad faith, coercion, refusing to put agreements into writing or allowing grievances to be processed. Courts usually grant state labor boards a great deal of latitude to enforce the law, shifting power to a state agency and eroding the discretion of school boards.

Many states ignore a clear lesson from the private sector—that collective bargaining is a power relationship—by trying to place school bargaining in an ideal setting in which employer and employee engage in rational discussion and neither party ever resorts to force. Such laws, for example, typically outlaw or severely restrict the use of strikes. The result is that the public employee unions break the law (by striking anyway) or settle for a kind of pseudo-bargaining known as "meeting and conferring" or have final agreements determined by a neutral (arbitrator).

Teacher union leaders in many states have made it clear that they will not settle for "meet and confer" and have stood ready and willing to accept the martyrdom of jail sentences and heavy fines that have been imposed on public sector strikers. Stated simply, those who have advocated public sector bargaining combined with a ban on strikes overlooked the power nature of negotiations and the role that the strike threat plays in establishing a balance of that power.

However, the traditional argument against allowing strikes in public employment remains overwhelmingly strong and has yet to be adequately rebutted. That argument says that most governmental operations are established by the public as monopolies to provide services for

which there are no readily available substitutes. The powerful role which competition plays in the private sector rarely exists to discipline or modify the goals of the parties in the public sector. Public sector contract settlements, therefore, often come at the expense of the public, with little regard for budgetary or market realities. So the argument remains: If the strike right is granted in public employment, there is a large risk that strong organizations will benefit at the expense of the unorganized, of relatively small and unimportant organizations, and of the public at-large.

In sum, if collective bargaining does not work well without the strike, and if the strike makes little or no sense in the public sector, large doubts remain as to the wisdom in the long run of attempting to provide, by statute, negotiating rights to public employees. Those doubts have not, however, prevented the proliferation of collective bargaining laws throughout the country. The political clout of public sector unions is too strong for legislatures to ignore—and without collective bargaining unions become impotent social organizations.

With some exceptions, there have been more strikes and/or more lost school days in states following the enactment of legislation than there were in the same states prior to passage of the law. Have the laws caused the strikes? No cause-and-effect relationship has been established, but it is obvious that the laws did not decrease the number of strikes.

Among the exceptions is the state of Illinois, where the Illinois Educational Labor Relations Act became effective on January 1, 1984. During the five years prior to enactment of the IELRA, the number of strikes by school district employees in Illinois averaged about 25 per year. In the eight years following enactment of the law, Illinois averaged about 15 school strikes each year. That's a drop of nearly 40 percent in the annual number of school strikes—despite the fact that the number of districts negotiating more than doubled.

9. When teachers strike

What can school board members expect if their teachers strike? The answer depends a great deal on whether the district has experienced strikes in the past. Members of a board that is struck for the first time may likely find the experience a little like a nasty political campaign marked by painful mud-slinging where nobody wins. Subsequent strikes tend to be a little less acrimonious.

Teachers go on strike to pressure the school board into accepting the union's proposals. They expect the board to be pressured by the community (primarily parents and students) and by the prospect of students being denied essential educational opportunities.

Union leaders may have another reason for supporting a strike—the need to strengthen teacher support for the union by engaging in an emotional, unifying activity. The stronger the union in terms of member loyalty, the less likely it will treat a strike as a morale-building ploy and the less likelihood of a truly nasty strike.

In any event, the union will strive to create community pressure on the board to force a favorable strike settlement.

Strike preparations

A strike presents the management team with a number of duties. For example, protecting the schools from vandalism should be part of the "strike management" plan of every school board and administration. Security very likely will involve only non-union employees working with law enforcement officials.

But a strike changes a lot of things that certain people

must know about. Parents, non-striking employees, vendors and other affected third parties need to know what to do. Is the district open for business? What should students do?

Steps for communicating with the public and dealing with union negotiations should be parts of the same strategy and should be worked out among the board, administration and professional negotiations consultants. Because there can be no delay in getting word to parents and others about the status of their schools, the board team needs to have its strategy in place long before the union announces its strike.

The struck school board is faced with a diverse array of options ranging from efforts to open schools in spite of the strike to a total lockout of all union employees. The school board also must decide how it will deal with the union and what to tell the public.

School boards who have entered into collective bargaining in states where strikes occur legally or illegally should immediately formulate a "strike plan." This plan should be completed and ready for implementation at any time. A good strike plan addresses the following matters:

- Feasibility of an injunction.
- Whether schools should be open or closed.
- Responsibility for coordinating the overall plan.
- Plans for the principals.
- Plans for clerical and non-certified staff.
- Plans for students.
- Plans for building security.
- Plans for substitutes and working employees.
- Communication plans and public relations.
- Transportation plans.
- Continuation of negotiations.
- Continuation or termination of employee benefits.
- Status of extra-curricular activities.
- Return-to-work policy.
- List of key community officials.

Appropriate planning which anticipates as many of the above concerns as possible will avoid confusion. Board

preparedness can demoralize strikers. Unpreparedness can be a catastrophe.

Even where these functions are handled according to plan, however, individual board members often confront problems for which there is little or no help available. They will have to deal with pressures placed on them by teachers and well-meaning parents.

Negotiations strategy

When it first becomes apparent that the teachers are likely to strike, the school board needs to examine its position on the issues. Far too many boards wait until the strike is underway and the heat from parents and teachers has become unbearable before deciding to sweeten their offer. They take a hard line on salaries, for example, and then cave in after the pressure mounts. Boards should remember this principle:

Unless a union feels it needs a strike to build its own strength, it is easier to get a settlement before a strike than during a strike.

If the board is going to give the teachers another one percent increase on the salary schedule, consider how much better it is to give it before the teachers strike. Backing down after a strike is in progress has the benefit of getting a settlement that reopens schools and reduces morale problems, of course. But the appearance of "caving in" also casts a dark shadow on the board's credibility and sets a precedent that encourages future strikes.

Giving the union that additional one percent increase before a strike may not prevent a strike, of course. In fact, if the teachers proceed to strike anyway, the board may feel it should have held back the one percent until teachers were ready to settle. (One approach is to offer the additional one percent privately or informally so that, even if refused, it can be used later to help the union save face.) But the school board that sticks to its guns will retain its credibility and discourage future strikes. Not "caving in" may lead to a long

and acrimonious strike that weakens the union, but the board most likely will have demonstrated fiscal responsibility and created an opportunity for compromise.

Probably the most difficult task facing a chief administrator or professional negotiations consultant is to get members of a school board to agree on a position on the issues and then stick to it when the pressure mounts. The union strategy is to divide and conquer, picking off one board member at a time, until a board majority is ready to give in to bargaining demands. (Some union strategists say, "Pick 'em out and wear 'em out.")

Just as they should avoid weakening under pressure, board members must resist the temptation to strike back or get even. Avoid the temptation to take the strike personally or to make heated decisions. Neither the board nor its individual members should make intemperate statements about the unreasonableness of teachers or threaten to open schools in spite of the strike or to dock teacher salaries for lost days. Any concessions that must be made at the end of the strike won't square with the earlier tough talk, and the board's public credibility will pay a big price.

Perhaps the best advice for board members and administrators alike during a strike: *Keep your eye on your real goal and remember that the strike will eventually end, but schools must keep going.* Seek to make the long-term impact of the strike as favorable as possible.

Union pressure tactics

When teachers strike, members of the school board, the superintendent, and a few members of the top management team will find themselves encircled and isolated. Teacher union tactics almost always produce an initial surge of parent and student support, which in turn fuels the teachers' emotional fires. The board and administration will become the objects of considerable spite, particularly at the outset of a first strike. People who formerly sought out your company will be nowhere in sight. Board members whose

livelihoods depend upon the goodwill of teachers and parents will feel especially vulnerable. It will be a terribly lonely feeling.

The longer a strike lasts, the more anxious rank-and-file strikers become about their jobs and paychecks and the more emotion a union must generate in order to keep up morale. That often means more harassment of individual board members and more negative publicity disseminated by the union.

Instances of truly vicious strike tactics have become relatively rare in recent years. In the early years of school union organizing, it was not uncommon for school board members to experience vandalism, boycotts of their private businesses, picketing at their homes and threats of much worse. The negative effect of such tactics on public sentiment toward teachers and their unions proved counterproductive, of course, so they tend to occur today only when anger gets completely out of control.

However, more subtle union tactics also can be effective when they harass or pressure board members. The union, for example, may publish the names and telephone numbers of school board members, who then receive numerous phone calls from people they don't know. Acquaintances and community leaders also can be called upon to pressure board members, who are generally made to feel alone against the world.

If it happens, be of good courage. You are not alone. The same thing has happened to every school board that has ever gone through a strike. Moreover, the tide will go out just as surely as the tide came in. If the board and administration can resist the temptation to retaliate, public opinion should reverse itself and turn on the union.

Unions win the settlements they want when (a) the board is stampeded into quick concession before public opinion shifts or (b) the board attacks the teachers in public, thereby lending credence to all the nasty things the teachers had been saying.

School boards win reasonable strike settlements when (a)

they remain calm, courageous and reasonable in the face of strident union attacks and (b) seek to negotiate a settlement at the table rather than in public forums.

If board members need help keeping up their courage, arrangements should be made for them to speak confidentially with other board members who have experienced a strike or with the staff or leaders of their state school boards association.

10. Concluding recommendations

To adjust management style to deal with the problems and constraints of collective bargaining, the following recommendations should be considered:

1) **Recognize the realities** of adversary collective bargaining—the intervention of the union between employee and employer and the implied threat to administrative authority and to staff involvement procedures. Also recognize that few school boards have the necessary experience and skills and few are prepared politically, psychologically or emotionally to deal with the process without assistance.

2) **Understand the historical** and psychological pressures that have resulted in formalized unions; the needs and the pressures of the faculty; the competition among the unions for recognition status; the conflicts between the union and non-union sympathizers during the organizational phase; and the initial response of inexperienced administrators to avoid or circumvent the process or make concessions to delay unionization.

3) **Recognize the constraints** peculiar to school bargaining: an elusive and distant source of revenue controlled by the legislature; traditions of teacher input or shared authority in governance which will be threatened by both union and management; extreme pressures from state-level union leaders whose goals are often unrelated to the diverse needs of teachers at the district level; faculty individuality which will collide with egalitarian union concepts; and traditions of informal evaluation and classroom freedom which

must meet the test of adversary bargaining.

4) Recognize that the key issues will be benefits, working conditions, grievance procedures, and impasse resolution (particularly third party authority). Do not get emotionally involved in fighting windmills, such as recognition itself, affiliation, representation, procedures, and personalities.

5) Accept the pressures of adversary bargaining. Attempts to circumvent reality or to develop informal collegial models typically result in frustration and impasse unless carefully planned and orchestrated by skilled negotiators. Select as negotiators individuals who understand the system, the constraints, and the realities of bargaining at the public school level and whose major aim is to reach an agreement acceptable to both parties, not to either "bust" the union (by management) or create explosive issues to develop solidarity (by the union).

6) Recognize that collective bargaining does not automatically bring forth unlimited benefits, nor does it automatically destroy the existing structure of governance or administration. Successful bargaining from the union standpoint depends upon realistic expectations of the membership so that the union can bring systematic and regular gains to its clients. Successful bargaining for management requires establishing reasonable strategies and goals to protect its important interests while allowing for union gains. Successful bargaining will, therefore, be conciliatory rather than traumatic, tense but not explosive.

7) Recognize that collective bargaining does formalize policies and procedures; that it results in a rigid legal document; that it equalizes and levels rather than allowing for individual differences; that it is pedantic, not pedagogic; that unions will tend to form bureaucracies very similar to managements; and that it requires a basic understanding by all involved, not just by the chief negotiator, if it is to be non-threatening.

8) Distinguish between labor relations and human

relations. Have programs in both, but keep them separate and distinct, recognizing their differences as well as their values. Both union and management must be aware that the most satisfied employee is one who feels positive toward management *and* the union. Destroying the other side also destroys the working relationship and increases tension. To achieve this equilibrium requires a great deal of effort in negotiating and managing a contract, and in understanding the needs, views, and pressures of the other party.

9) Understand the political pressures, particularly at impasse, and the importance of confidentiality, consensus, and unanimity of positions and support from the entire management team.

10) Recognize that the most important objective is an end product (contract) that is not restrictive—that is, one that does not prevent the organization from providing the best educational program possible. Don't let frustrations with the process lead to an alternative process that sacrifices control of the outcomes.

Glossary

Agency Shop (Fair Share)

A provision in a collective agreement which requires that all employees in the negotiating unit who do not join the exclusive representative (union) pay a fixed fee, usually the equivalent of labor organization's dues, as a condition of employment. Under some arrangements, the payments are allocated to the labor organization's welfare fund or to a recognized charity. An agency shop may operate in conjunction with a modified union shop. *See Union Shop. See page 12.*

Agreement

A written agreement between an employer (or an association of employers) and a labor organization (or organizations), usually for a definite term, defining conditions of employment, rights of employees and the labor organization, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. *See Collective Negotiations. See Contract.*

American Arbitration Association (AAA)

A private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration as a method of settling commercial and labor disputes. The AAA provides lists of qualified arbitrators to labor organizations and employers on request.

Arbitration

Method of settling employment disputes through recourse to an impartial third party, whose decision may be final

and binding. *See page 61.*

Arbitration—Advisory (Fact-Finding)
A method of settling disputes where the arbitrator's decision may be refused by either party. The arbitrator has no power to enforce a decision and can only recommend solutions. Used for both interest and grievance arbitration.

Arbitration—Binding
The arbitrator's decision is final and must be accepted by both parties. A dissatisfied party can only appeal the arbitrator's ruling through the courts.

Arbitration—Compulsory
Arbitration process which is required by law or contract; the parties must submit contract disputes (interest arbitration) to arbitration. If one party calls for arbitration the other party cannot refuse to arbitrate.

Arbitration—Grievance
A final step in a grievance procedure used to determine whether a violation, misapplication, or misinterpretation of an existing agreement has occurred. May be either advisory or binding. *See page 61.*

Arbitration—Interest
A process that is used to force parties to reach settlement when at impasse over terms and conditions that are to be included in an agreement. It may be either compulsory or voluntary, binding or advisory (fact-finding). *See page 61.*

Arbitration—Voluntary
Arbitration process which is not compulsory, but which allows either party to refuse to enter into arbitration if it does not feel that the arbitrator can resolve the dispute.

Arbitrator
An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited

group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

Bargaining Agent

Organization recognized by the employer as the exclusive representative of all employees in the negotiating unit for purposes of collective negotiations. Also: bargaining representative; labor organization; union. *See pages 13, 46.*

Bargaining Unit

Group of employees recognized by the employer or group of employers, or designated by an authorized agency as appropriate for representation by a labor organization for purposes of collective negotiations. *See page 46.*

Boilerplate

Basic contract language necessary to regulate and implement the substantive provisions of the agreement.

Caucus

When one party or the other calls "time out" during negotiations in order to discuss strategy and/or the issues under consideration without the other party present.

Certification

Recognition of the labor organization based on the mandatory procedure for determining the exclusive representative of an appropriate unit.

Collective Negotiations—Professional Negotiations

A process whereby employees as a group and their employers make offers and counter-offers for the purpose of reaching a mutually acceptable agreement and the execution of a written document incorporating any such agreement. This term implies good faith on the part of both sides but does not require either side to make concessions to the other. *See page 30.*

Consultation
An obligation on the part of an employer to consult with the employee organization on particular issues before taking action on them.

Contract
A written agreement that is legally enforceable. *See Agreement. See pages 25, 34.*

Crisis Bargaining
Collective bargaining which takes place under the threat of an imminent strike deadline. Distinguished from "extended negotiations," in which both parties have ample time to present and discuss their positions.

Decertification
Withdrawal of a labor organization's official recognition as exclusive negotiating representative.

Decisional Bargaining
Bargaining with the union before making a management decision or implementing a change in some mandatory subject of bargaining. Distinguish from "impact bargaining." *See page 28.*

Dispute
Any disagreement between an employer and a labor organization which requires resolution in one way or another; e.g., inability to agree on contract terms or to settle a grievance.

Dues Check-off
An agreement by the employer to deduct the organization dues from the wages of union members and transmit them to the union.

Exclusive Negotiating Rights
The right and obligation of an employee organization designated as majority representative to negotiate for all employees, including nonmembers, in the bargaining unit.

Expedited Bargaining

Contract bargaining within a condensed time frame. *See page 36.*

Fact-finding Board

A group of individuals appointed to investigate, assemble, and report the facts in an employment dispute, sometimes with authority to make recommendations for settlement. *See Advisory Arbitration.* *See page 61.*

Fair Share

See Agency Shop.

Federal Mediation and Conciliation Service (FMCS)

An independent Federal agency which provides mediators to assist parties involved in negotiations or in a labor dispute; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation." Mediation services are also provided by several state agencies.

Fringe Benefits

Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacation, pensions, health and life insurance plans, retirement incentives, etc.). No agreement prevails as to the list of practices that should be called "fringe benefits." Other terms often substituted for "fringe benefits" include "wage extras," "hidden payroll," "non-wage labor costs," and "supplementary wage practices."

Good Faith

The willingness of the parties to meet and discuss bargaining issues while making, in total, a reasonable effort to reach an agreement. It does not imply that either party concede, compromise, or agree to any particular proposal. *See page 29.*

Grievance

A complaint by an employee that a provision of the collective agreement under which he is working is being violated. *See page 27.*

Grievance Procedure

A formal plan set forth in the collective agreement which provides for the adjustment of grievances through discussions at progressively higher levels of authority in management and the employee organization. May or may not conclude with arbitration. *See page 62.*

Impact Bargaining

Mid-term bargaining that is required by law in some states when the employer takes or wants to take action on an issue that affects employee working conditions. Contrast with "decisional bargaining." *See pages 27-28.*

Impasse

When the positions of both sides do not allow further concessions and agreement has not been reached. Usually triggers involvement of a neutral third party and may have a legislated time line. *See pages 28-29, 60.*

Injunction

A court order restraining one or more persons or unions from performing some act which the court believes would result in irreparable injury to property or other rights. May be a temporary injunction or a permanent injunction. *See page 67.*

Labor Management Relations Act of 1947 (Taft-Hartley Act)

Federal law, amending the National Labor Relations Act of 1935 (Wagner Act). The Taft-Hartley Act defined and made illegal a number of unfair labor practices by unions, and retained the definition of unfair practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not

affect interstate commerce. Other major exclusions are: employees subject to the Railway Labor Act, agricultural workers, government employees, domestic servants, and supervisors. Amended by Labor Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act).

Lockout

When the employer takes action to prevent employees from coming to work, usually as a response to impasse and strike actions of employees. *See page 67.*

Maintenance of Standards (Past Practice) Clause

A contract provision which prevents employers from making any changes in existing employment practices or policy without negotiating the change with the employee organization even if such changes are not considered in the agreement. Automatically broadens the scope of negotiations to cover every conceivable personnel policy or action. *See Past Practice.*

Management Rights

The rights reserved to management which may be expressly noted as such in a collective agreement. *See pages 22, 28.*

Mediation

Informal attempt by a third party to help in the settlement of an employment dispute through persuasion, advice or other suggestions, but without specific public recommendations for settlement. *See page 60.*

Meet and Confer

Informal negotiations which do not result in collective bargaining agreements and/or recognized collective bargaining agents. *See pages 1, 8, 64.*

Memorandum of Understanding

An agreement between two parties that is not incorporated into the contract but is enforceable through the contract interpretation procedures.

Mid-term Bargaining (Interim Bargaining)
Bargaining that takes place while a collective bargaining agreement is in force. *See page 27.*

National Labor Relations Act of 1935 (Wagner Act)
Basic federal act guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing. The Act also defined "unfair labor practices" as regards employers. It was amended by the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959. *See page 4.*

No-strike Clause
A provision in a collective agreement in which the employee organization agrees not to strike during the term of the agreement.

Packaging
Combining unresolved bargaining issues in order to make offers on many items rather than considering each issue separately. *See page 32.*

Past Practice
Current policies and procedures, which cannot be altered except through collective bargaining. *See Maintenance of Standards. See pages 9, 21, 38.*

Picketing
The patrolling near the place of employment by members of an employee organization to publicize their dispute. *See pages 6, 70.*

Ratification
The formal approval of a newly-negotiated agreement by vote of the organization members or the school board. *See page 53.*

Recognition
Employer acceptance of an organization as authorized to

negotiate, usually for all of the members of a negotiating unit. *See page 5.*

Reopening Clause

A provision in a collective agreement stating the time or the circumstances under which negotiations may be reopened prior to the expiration of the contract; commonly restricted to only certain provisions of the agreement rather than the agreement as a whole.

Retrieval Bargaining

Negotiations in which the employer attempts to remove benefits or rights previously agreed to in a union contract. *See page 19.*

Scope of Negotiations

Personnel policies and practices and other matters affecting working conditions which an employer and a labor organization will consider when negotiating an agreement. If legislated, mandatory subjects will have to be bargained. *See pages 22, 62.*

Seniority

Term used to designate an employee's status relative to other employees, as in determining order of promotion, layoff, vacation, etc. **Straight seniority**—seniority acquired solely through length of service. **Qualified seniority**—other factors such as ability considered with length of service. **Departmental or unit seniority**—seniority applicable in a particular department or agency rather than in the entire establishment. A "seniority list" ranks individual workers in order of seniority. *See page 12.*

Side Bar

A negotiations tactic whereby chief negotiators or small groups can informally negotiate apart from the larger group without the pressure of making formal proposals.

State Labor Relations Board

A legislated body whose function is to administer and

regulate a collective bargaining law. *See pages 22, 29, 64.*

Strike

A temporary stoppage of work by a group of employees to enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. *See pages 63, 66.*

Strike Vote

A vote conducted among members of an employee organization to determine whether or not a strike should be called.

Unfair Labor Practice

Actions which an employer and labor organization are to avoid in relating to each other throughout the collective bargaining process. *See page 64.*

Union Shop

Provision in a collective agreement that requires all employees to become members of the union within a specified time after hiring (typically 30 days) or after a new provision is negotiated, and to remain members of the union as a condition of continued employment.

Modified Union Shop—variations on the union shop. Certain employees may be exempted, such as those already employed at the time the provision was negotiated.

Win-Win Bargaining

An alternative bargaining process designed to enhance communications and minimize confrontation. Requires joint ownership and acceptance of procedures. *See page 35.*

Zipper Clause

A contract provision specifically barring any attempt to reopen negotiations during the term of the agreement. *See Reopening Clause. See page 28.*

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